FEDERAL REGISTER

Vol. 89 Wednesday,
No. 70 April 10, 2024

Pages 25117–25496

OFFICE OF THE FEDERAL REGISTER

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Federal Register
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FARM CREDIT ADMINISTRATION

12 CFR Part 628

RIN 3052–AD42

Risk-Weighting of High Volatility Commercial Real Estate (HVCRE) Exposures

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA or Agency) is amending its regulatory capital requirements for Farm Credit System (FCS or System) banks and associations to define and establish a risk weight for High Volatility Commercial Real Estate (HVCRE) exposures.

DATES: The final rule will be effective January 1, 2025.

FOR FURTHER INFORMATION CONTACT:

Technical information: Ryan Leist, *LeistR@fca.gov,* Associate Director, Finance and Capital Markets Team, or Xahra Pollard, *PollardX@fca.gov,* Senior Policy Analyst, Office of Regulatory Policy, (703) 883–4223, TTY (703) 883–4056 or *ORPMailbox@fca.gov;* or

Legal information: Jennifer Cohn, *CohnJ@fca.gov,* Assistant General Counsel, Office of General Counsel, (703) 883–4020, TTY (703) 883–4056.

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I. Introduction

A. Objectives of the Final Rule

FCA's objectives in adopting this rule are to:

- Update capital requirements to reflect the increased risk characteristics exposures to certain acquisition, development or construction (ADC) loans pose to System institutions; and

- Ensure the System's capital requirements are comparable to the Basel Framework issued by the Basel Committee on Banking Supervision (BCBS or Basel Committee) and the standardized approach the Federal banking regulatory agencies (FBRAs) have adopted,[1] with deviations as appropriate to accommodate the different regulatory, operational, and credit considerations of the System.

[1] The FBRAs are the Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (FRB), and the Federal Deposit Insurance Corporation (FDIC). In general, under the standardized approach, an institution's regulator assigns fixed risk weights to exposures based on their relative risk characteristics. (See Basel Framework at CRE 20).

B. Background

1. Farm Credit System

In 1916, Congress created the System to provide permanent, affordable, and reliable sources of credit and related services to American agricultural and aquatic producers. As of January 1, 2024, the System consists of three Farm Credit Banks, one agricultural credit bank, 55 agricultural credit associations, one Federal land credit association, several service corporations, and the Federal Farm Credit Banks Funding Corporation (Funding Corporation).[2] System banks (including both the Farm Credit Banks and the agricultural credit bank) issue Systemwide consolidated debt obligations in the capital markets through the Funding Corporation,[3] which enables the System to extend short-, intermediate-, and long-term credit and related services to eligible borrowers. Eligible borrowers include farmers, ranchers, aquatic producers and harvesters and their cooperatives, rural utilities, exporters of agricultural commodities products, farm-related businesses, and certain rural homeowners. The System's enabling statute is the Farm Credit Act of 1971, as amended (Act).[4]

2. Post-Financial Crisis Capital Rulemakings

In October 2013 and April 2014, the FBRAs published in the **Federal Register** capital rules governing the banking organizations they regulate (the U.S. rule).[5] When it was adopted, the U.S. rule reflected, in part, the BCBS's

[2] The Federal Agricultural Mortgage Corporation (Farmer Mac) is a Farm Credit System institution that was established in 1988 to create a secondary market for agricultural real estate mortgage loans and other rural-focused loans. The FCA has a separate set of capital regulations, at subpart B of part 652, that apply to Farmer Mac. This rulemaking does not affect Farmer Mac, and the use of the term ''System institution'' in this preamble and rule does not include Farmer Mac.

[3] The Funding Corporation was established pursuant to section 4.9 of the Farm Credit Act of 1971, as amended, and is owned by all System banks. The Funding Corporation is the fiscal agent and disclosure agent for the System. The Funding Corporation is responsible for issuing and marketing debt securities to finance the System's loans, leases, and operations and for preparing and producing the System's financial results.

[4] 12 U.S.C. 2001–2279cc. The Act is available at *www.fca.gov* under ''Laws and regulations'' and ''Statutes.''

[5] 78 FR 62018 (October 11, 2013) (final rule of the OCC and the FRB); 79 FR 20754 (April 14, 2014) (final rule of the FDIC).

document entitled ''Basel III: A Global Regulatory Framework for More Resilient Banks and Banking Systems'' (Basel III).[6] Although the U.S. rule has been updated since then, the risk weights generally have not changed.

The BCBS was established in 1974 by central banks with bank supervisory authorities in major industrial countries. The BCBS develops banking guidelines and recommends them for adoption by member countries and others.[7] Basel III was an internationally agreed upon set of measures developed in response to the 2007–2009 worldwide financial crisis with the goal of strengthening the regulation, supervision, and risk management of banks. Since that time, the BCBS has revised, updated, and integrated the Basel III reforms into a consolidated Basel Framework (Basel Framework), which comprises of all of the current and forthcoming BCBS standards.[8] U.S. banking regulators are not required by law to adopt the Basel Framework but, as discussed above, the U.S. rule, which the FBRAs continue to update,[9] is Basel-based.[10]

FCA has had tier 1/tier 2 capital rules that are comparable to the Basel guidelines and the U.S. rule since 2016.[11] Beginning in 2010, System institutions requested FCA adopt a capital framework that was as similar as possible to the capital guidelines of the FBRAs. In particular, System institutions had asserted that consistency of FCA capital requirements with those of the FBRAs would allow investors, shareholders, and others to better understand the financial strength and risk-bearing capacity of the System.[12]

3. ADC Lending Risk and HVCRE Risk Weight

Included in the provisions of FCA's 2014 proposed rulemaking to revise its regulatory capital requirements was a 150 percent risk weight for HVCRE exposures due to their higher risk characteristics.[13] As discussed below, HVCRE exposures are defined as acquisition, development, or construction exposures that meet certain criteria, and do not qualify for any of the exclusions, in the definition.

HVCRE exposures have increased risk characteristics supporting a 150 percent risk weight. Key risks to projects during the development and construction phase include, among others, financial risks, contract risks, and environmental risks. Financial risks include, but are not limited to, project delays and cost overruns, sponsor risk, project feasibility risk, and contractor risks. While these risks can be a threat to any type of lending, they are of particular risk to construction loans, because they can hinder project completion, and repayment of construction loans usually cannot begin until the project is finished.[14]

Project delays and cost overruns are two key financial risks to construction loans. Supply chain constraints, permit delays, and labor shortages are some examples of factors that can contribute to the delay of projects or their costs exceeding budget. Other financial risks include sponsor, project feasibility, and contractor risks. Sponsors without adequate and relevant industry and project planning experience and expertise increase the risk of a construction project incurring additional costs and delays, including permitting delays. Inadequate sponsor financial strength can impact the availability of sponsor capital when needed for budget overruns. Project feasibility considerations include changes in either supply or demand factors, technology considerations, and competitive forces, which could detrimentally impact the underlying economics of a construction project. Contractor risk can threaten the financial viability of a construction project if the contractor does not have the requisite experience and expertise to complete the project successfully. Contractor inefficiencies or errors can derail a project's timeline or budget. The financial capacity of the contractor is also critical, especially in cases where the contractor is responsible for any cost overruns.

Contract risk is another key category of risk in construction lending. One of the most important contractual agreements in a construction project is the construction contract. While some types of construction contracts shift the responsibility of managing key aspects of the project to a contractor, other contracts can leave the borrower exposed to such risks as fluctuations in input costs and potential contract disputes with sub-contractors.

Another key risk to construction projects is environmental risk. Such risk can arise when site assessments are not properly conducted prior to construction and unidentified environmental issues such as contamination later derail project timelines or budgets, or even threaten the viability of the project. Contamination can also occur after construction has already begun and potentially involve expensive cleanup costs. Beyond contamination, borrowers also face other potential environmental impacts of the project, including the effects on native habitats for flora and fauna where legal or regulatory protections are in place.

FCA has recently seen certain System institution-funded construction projects particularly challenged due to some of the risks discussed above. Specifically, supply chain disruptions and labor shortages have led to project delays and cost overruns following the COVID–19 pandemic, recent geopolitical events, and increased inflation. Inflationary pressures continue to persist and have impacted the costs of some rural infrastructure projects.

Supply chain constraints and disruptions in project financings across different industries, including the leasing sector, have in some cases resulted in material increases in project costs and construction delays. The

[6] *See* ''Basel III: A global regulatory framework for more resilient banks and banking systems,'' revised version June 2011, and other Basel III documents at *https://www.bis.org/bcbs/basel3.htm?m=2572.* Prior to the FBRAs' adoption of these regulations, their rules reflected earlier Basel frameworks.

[7] The FBRAs are represented on the Basel Committee, but the FCA is not.

[8] The Basel Framework can be found at *http://www.bis.org/basel_framework/index.htm*, and the BCBS continues to update it as indicated on the website.

[9] On September 18, 2023, the FBRAs issued a notice of proposed rulemaking (FR 88 64028) that would substantially revise the capital requirements applicable to large banking organizations and to banking organizations with significant trading activity. The proposed revisions would be generally consistent with recent changes to international capital standards by the BCBS.

[10] The Federal Housing Finance Agency, which oversees the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, has also adopted Basel-based capital rules.

[11] While FCA's earlier capital regulations incorporated some elements of Basel standards and the FBRAs' rules, particularly the risk weighting of assets in the denominator of the capital ratios, the rule FCA adopted in 2016 aligned the System's capital requirements more closely with the Basel III framework and with the U.S. rule's standardized approach (which was based on Basel standards). See 81 FR 49720 (July 28, 2016). FCA has amended its capital rules since 2016, most significantly in 2021. See 86 FR 54347 (October 1, 2021). Like the FBRAs, FCA is not required by law to follow the Basel standards. The FCA's rule differed in some respects from the Basel standards and the U.S. rule in consideration of the cooperative structure and the organization of the System.

[12] See 79 FR 52814, 52820 (September 4, 2014).

[13] 79 FR 52814 (September 4, 2014).

[14] Projects where repayment can begin before completion have fewer risk characteristics and may warrant a lower risk weight. As discussed in Section II.C.1 of this preamble—Scope of HVCRE Exposure Definition—under the third criterion of the HVCRE exposure definition, a credit facility that will be repaid from the borrower's ongoing business, as opposed to being repaid from future income or sales proceeds from the property, would not be classified as an HVCRE exposure. Moreover, as discussed in Section II.C.2.c of this preamble—Loans on Existing Income Producing Properties That Qualify as Permanent Financings—loans on existing income producing properties that qualify as permanent financings are excluded from the definition of HVCRE exposure.

impact to costs and schedules has stemmed partly from the inadequate supply of key components but also from increased input costs. Such supply chain issues could pose a credit risk to System institutions if construction timelines are materially impacted and construction costs increase significantly during the construction phase.

As discussed above, various risks have continued to underscore construction lending, some of which have been more evident in recent years. These risks threaten the ability for such projects to be completed in a manner that ensures adequate repayment to lenders. As such, construction exposures warrant the higher risk weight proposed in this rule.

The FBRAs first recognized the higher risk in construction lending in the higher risk weights they adopted in their capital regulations in 2013–2014. FCA's 2014 proposed HVCRE provisions were very similar to those the FBRAs had adopted. System commenters expressed concern about parts of the proposed HVCRE definition and asked FCA not to adopt the definition. FCA did not adopt the HVCRE provisions in its capital rule in 2016, because it wanted to further consider and analyze HVCRE and the issues related to these exposures. In the preamble to the final capital rule in 2016, FCA said the Agency expected to engage in additional HVCRE rulemaking in the future.[15]

Beginning in 2017, the FBRAs issued several proposed rules on HVCRE exposures to address concerns with the original definition.[16] On May 24, 2018, the President signed into law the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA),[17] adding a new statutory definition that would have to be satisfied for an exposure to be risk-weighted as an HVCRE exposure. On December 13, 2019, the FBRAs published a final rule, which became effective on April 1, 2020, implementing the EGRRCPA requirements.[18]

Recognizing the need to update capital requirements to reflect the increased risk characteristics that exposures to HVCRE loans pose to System institutions, and in accordance with this rule's objective to ensure continued comparability to the Basel guidelines and the FBRAs' rules, on August 26, 2021, FCA published in the **Federal Register** a notice of proposed rulemaking (proposed rule or proposal) seeking public comment on amendments to its capital rules to define and establish a risk weight for HVCRE exposures.[19]

II. Summary of the Proposed Rule, Comments Received, and Final Rule

FCA's proposed rule was similar to the FBRAs' rule in most respects, with deviations as appropriate to accommodate the different regulatory, operational, and credit considerations of the System. Notably, the proposed rule contained provisions from the FBRAs' final rule that addressed certain concerns commenters raised in response to the FCA's 2014 proposed rule.

As discussed further below, FCA is adopting a final definition of HVCRE exposure with one modification from the proposal based on comments received. The Agency is also clarifying in this preamble certain provisions of the HVCRE rule.

FCA reminds System institutions that this is a risk-weighting regulation only. System scope and eligibility authorities are contained in other provisions of FCA's regulations and in the Act.[20]

A. Summary of the Proposed Rule

Because of the increased risk characteristics in HVCRE exposures, FCA proposed, consistent with the FBRAs, to assign a 150 percent risk weight to those exposures, rather than the 100 percent risk weight generally assigned to commercial real estate and other corporate exposures.[21]

B. Comments Received

In response to the HVCRE proposal, FCA received 11 comment letters: One letter from the Farm Credit Council (FCC), with input from a System workgroup, consisting of several System institutions, that was established to review the HVCRE proposal and other related documents (System Comment Letter);[22] one letter each from CoBank, ACB (CoBank Letter),[23] Farm Credit Bank of Texas (FCBT Letter),[24] and AgriBank, FCB (AgriBank Letter),[25] all of which are System banks; and letters from seven System associations: Farm Credit Mid-America, ACA,[26] Farm Credit of the Virginias, ACA,[27] Northwest Farm Credit Services, ACA (Northwest Letter),[28] Capital Farm Credit, ACA,[29] Farm Credit West,[30] ACA, Compeer Financial, ACA,[31] and Farm Credit of Florida, ACA.[32] All System bank and association commenters supported the System Comment Letter, and several included identical language seeking clarification on several provisions and requesting further exclusions to the HVCRE exposure definition. Furthermore, no commenters supported any specific provisions of the proposed rule, and they all stated the burden of identifying HVCRE loans on an ongoing basis greatly exceeds the benefit of identifying the minimal potential adverse impact that such loans could have on the safety and soundness of a System institution. However, System commenters generally supported FCA's attempt to ensure FCA's capital rules are similar to those adopted by the FBRAs with the guiding principle that the same loan to the same borrower—whether it is made by a commercial bank or a System institution—carries the same risk and should be assigned the same risk weight.

C. Discussion of Final Rule and Responses to Comments

1. Scope of HVCRE Exposure Definition

FCA proposed to define an HVCRE exposure as ''a credit facility secured by land or improved real property'' that met the three criteria discussed below (and that did not meet any of the definition's exclusions, which are discussed in Section II.C.2 of this preamble—Exclusions From HVCRE Exposure Definition).[33] If a credit facility secured by land or improved real property did not meet all three

[15] 81 FR 49719, 49736 (July 28, 2016).

[16] FCA staff submitted a comment letter in response to one of the proposals that communicated concerns with a proposed exemption for agricultural land.

[17] Public Law 115–174, 132 Stat. 1296 (2018).

[18] 84 FR 68019.

[19] 86 FR 47601 (August 26, 2021). The proposed rule included a 90-day comment period. On October 20, 2021, FCA published in the **Federal Register** a notice extending the comment period for an additional 60 days, until January 24, 2022.

[20] As stated in the preamble to the capital rule FCA adopted in 2016, ''We remind System institutions that the presence of a particular risk weighting does not itself provide authority for a System institution to have an exposure to that asset or item.'' See 81 FR 49719, 49722 (July 28, 2016).

[21] FCA regulation § 628.32(f)(1).

[22] System Comment Letter dated January 19, 2022.

[23] CoBank Letter dated January 20, 2022.

[24] FCBT Letter dated January 24, 2022.

[25] AgriBank Letter dated January 24, 2022.

[26] Farm Credit Mid-America, ACA Letter dated January 26, 2022.

[27] Farm Credit of the Virginias, ACA Letter dated January 24, 2022.

[28] Northwest Letter dated January 24, 2022. Northwest Farm Credit Services, ACA merged with Farm Credit West, ACA to form AgWest Farm Credit, ACA, effective January 1, 2023.

[29] Capital Farm Credit, ACA Letter dated January 21, 2022.

[30] Farm Credit West, ACA Letter dated January 22, 2022. Farm Credit West, ACA merged with Northwest Farm Credit Services, ACA to form AgWest Farm Credit, ACA, effective January 1, 2023.

[31] Compeer Financial, ACA Letter dated January 18, 2022.

[32] Farm Credit of Florida, ACA Letter dated January 21, 2022.

[33] FCA regulation § 614.4240(q) defines ''real property'' as ''all interests, benefits, and rights inherent in the ownership of real estate.''

criteria, it would not be an HVCRE exposure.

The determination of whether a credit facility is an HVCRE exposure is made on new exposures only. New exposures determined not to be HVCRE after initial evaluation do not need to be evaluated again as HVCRE exposures. New exposures include loan originations, modifications, and project alterations that materially change the underwriting of the credit facility (such as increases to the loan amount, changes to the size and scope of the project, or removing all or part of the 15 percent minimum capital contribution in a project).

Credit facilities that meet the definition of HVCRE exposure after initial evaluation may be reclassified as non-HVCRE if they meet the criteria discussed in Section II.C.3 of this preamble—Reclassification as a Non-HVCRE Exposure.

Under the proposed definition, a credit facility is secured by land or improved real property if the estimated value of the real estate collateral at origination (after deducting all senior liens held by others) is greater than 50 percent of the principal amount of the loan at origination.[34] For example, if an institution made a loan to construct and equip a building, and the loan was secured by both the real estate and the equipment, the institution would have to estimate the value of the building, upon completion, and of the equipment. If the value of the building was greater than 50 percent of the principal amount of the loan at origination, the loan would be a ''credit facility secured by land or improved real property.'' [35] If the value of the building, upon completion, was less than 50 percent of the principal amount of the loan at origination, it would not be a ''credit facility secured by land or improved real property.'' Accordingly, it would not be an HVCRE exposure.

As discussed above, a credit facility that is secured by land or improved real property would not be classified as an HVCRE exposure under the proposed rule unless it met three criteria. If such a facility did not meet all three criteria, it would not be an HVCRE exposure. These criteria are discussed below.

Description of Three Criteria of HVCRE Definition

First, under paragraph (1)(i) of the proposed HVCRE definition, the credit facility must primarily finance, have financed, or refinance the acquisition, development, or construction of real property. This criterion would be satisfied if more than 50 percent of the proposed use of the loan funds was for the acquisition, development, or construction of real property. The criterion would not be satisfied if 50 percent or less of the proposed use of the loan funds was for the acquisition, development, or construction of real property. In the case of revolver loans that are secured by land or real property, if more than 50 percent of the proposed use of the revolver funds is for acquisition, development, or construction of real property, the entire loan would satisfy this criterion and potentially be subject to HVCRE classification if it meets the other two criteria and is not subject to an exclusion.

Second, under paragraph (1)(ii) of the proposed HVCRE definition, the purpose of the credit facility must be to provide financing to acquire, develop, or improve such real property into income-producing property.

Finally, under paragraph (1)(iii) of the proposed HVCRE definition, the repayment of the credit facility must depend upon the future income or sales proceeds from, or refinancing of, such real property. The preamble to the proposed rule explained that under this criterion, credit facilities that would be repaid from the borrower's ongoing business, as opposed to being repaid from future income or sales proceeds from the property, would not be classified as an HVCRE exposure.

Comments on HVCRE Exposure Definition and FCA's Responses

FCA received various comments on the proposed definition of HVCRE exposures, including the three criteria. On a broad level the Farm Credit Council, supported by all System bank and association commenters, commented that the rulemaking was not needed due to limited opportunity for System institutions to make HVCRE loans. They commented that the burden in identifying these loans exceeds the benefit of identifying the risk to safety and soundness.[36]

These comments are premised on a misunderstanding of the definition of HVCRE. Specifically, these comments assert that the HVCRE risk weight ''was designed by the FBRAs to identify commercial real estate loans of a speculative nature (such as office buildings and strip malls without signed lessees).'' [37]

Contrary to the commenters' assertion, the FBRAs' definition includes more than just speculative commercial real estate loans. The plain language of their definition includes all credit facilities that are secured by land or improved real property and that satisfy the three criteria and are not subject to an exclusion. None of the criteria and exclusions limit the HVCRE definition only to speculative commercial real estate loans. The HVCRE definition, including the three criteria and considering the exclusions, includes, for example, project finance construction and construction of facilities dependent on third-party integrator agreements. System institutions make loans of this nature, and such loans satisfy this definition.

The System Comment Letter also stated that there are better ways to accomplish the Agency's objectives.[38] Two commenters referenced System practices currently in place at System institutions to control risk concentrations in construction exposures including risk-based borrower ratings, concentration and hold limits, and underwriting standards.[39] While the Agency recognizes that System institutions can mitigate their HVCRE risk exposures through risk management practices, regulatory risk weights ensure that a minimum amount of capital is reserved by all institutions. In the same way that corporate exposures are generally risk-weighted at 100 percent [40] and certain past due and nonaccrual exposures are risk-weighted at 150 percent [41] despite variations in institutions' credit administration practices, HVCRE exposures should all be subject to the same risk weight, regardless of an

[34] This proposed definition is consistent with the definition of ''a loan secured by real estate'' in the FBRAs' Call Report forms and instructions.

[35] A determination that a loan is a ''credit facility secured by land or improved real property'' does not mean that the loan is necessarily an HVCRE exposure. As mentioned above, a loan also has to satisfy three criteria, and not be subject to an exclusion, to be an HVCRE exposure.

[36] CoBank Letter dated January 20, 2022, and Farm Credit of Florida, ACA Letter, dated January 21, 2022, reiterated this comment verbatim while Capital Farm Credit, ACA Letter, dated January 21, 2022, reiterated the comment in summary form.

[37] System Comment Letter dated January 19, 2022, page 2.

[38] CoBank Letter dated January 20, 2022, and Farm Credit of Florida, ACA Letter, dated January 21, 2022, reiterated this comment verbatim while Capital Farm Credit, ACA Letter, dated January 21, 2022, reiterated the comment in summary form.

[39] Farm Credit of the Virginias, ACA Letter dated January 24, 2022, and Farm Credit West, ACA Letter dated January 22, 2022.

[40] § 628.32(f)(1).

[41] FCA regulation § 628.32(k)(1) assigns a 150 percent risk weight to past due and nonaccrual exposures, except sovereign or residential exposures, that are not guaranteed or secured by financial collateral.

individual institution's risk management practices.

The System Comment Letter, supported by all System bank and association commenters, included various questions and comments regarding the proposed third criterion.[42] The Letter requested clarification of the terms ''future income'' and ''income from ongoing business''; asked whether ''income from ongoing business'' includes any assets built and operated by the business that developed the property; asked the percentage of future and ongoing income relied upon when determining whether a property is income-producing; and requested consideration of the fact that repayment can come from multiple sources. Moreover, the letter requested an explicit exclusion in the regulation for credit facilities for which repayment would be from the ongoing business of the borrower as well as removal of ''third-party rent or lease payments'' from the proposed definition. Finally, the letter included a request for FCA to consider the impact of ''third-party rent or lease payments'' on young, beginning, or small (YBS) farmers who may rely on third-party integrator agreements to start themselves in agriculture.[43]

In response to these comments, FCA reiterates that the proposed third criterion was that the credit facility is ''dependent on future income or sales proceeds from, or refinancing of,'' the property for repayment. The proposed regulation did not refer to ''income from ongoing business.'' The preamble to the proposed rule discussed loan repayment from ongoing business as an example of a form of repayment that does not satisfy the proposed third criterion because it is not repayment from future income or sales proceeds from the real property.[44] FCA confirms that if a credit facility was dependent on any form of repayment other than future income or sales proceeds from, or the refinancing of, the real property, including repayment from income generated by any assets within a borrower's portfolio, it would not satisfy this proposed criterion and would therefore not be an HVCRE exposure.

The System Comment Letter specifically referenced assets built and operated by the business that developed the property. FCA clarifies that for the purpose of HVCRE classification, the cash flow of the borrower must be analyzed, not that of the property developer or some other entity other than the borrower. Because this preamble clarifies the plain language of the third criterion, that credit facilities for which repayment would be from the ongoing business of the borrower are not covered by that criterion and are not HVCRE exposures, explicit regulatory language to that effect is not needed.

In response to the question about the percentage of future and ongoing income relied upon when determining whether a property is income-producing and for consideration of the fact that repayment can come from multiple sources (both ongoing and future income or sales proceeds), FCA retains the proposed requirement that if any part of the repayment on a credit facility depends on future income or sales proceeds, the credit facility satisfies the proposed third criterion. FCA believes specifying a percentage threshold for future income other than zero to determine HVCRE status would be overly complicated and burdensome. The Agency recognizes that repayment of credit facilities may come from multiple sources but, for the purpose of HVCRE classification, if any repayment depends on future income or sales proceeds, the exposure would meet the proposed third criterion of the definition of HVCRE.

Regarding the System Comment Letter's request to remove ''third-party rent or lease payments'' from the proposed definition of HVCRE exposure, FCA notes that terminology is not actually included in the definition. Rather, it is found in the preamble to the proposed rule, in a discussion of ''certain commercial real property projects'' that would qualify for exclusion from HVCRE.[45] As such, there is no need to remove that term from the definition of HVCRE. However, in Section II.C.2.d of this preamble—Certain Commercial Real Property Projects—the reference to ''third-party rent or lease payments'' that was in the preamble to the proposed rule has been replaced with a reference to ''revenues from future income.''

As discussed above, credit facilities where repayment would be from any type of future income, including third-party rents or lease payments, were included in the proposed definition of HVCRE to reflect the risk of such facilities. Excluding third-party rents or lease payments, including third-party integrator agreements, from the definition of future income is not warranted by the risk in those exposures. There is further discussion around exclusions for integrator contracts in Section II.C.2.f.ii of this preamble—Agricultural Production or Processing Facilities with Contractual Purchase Agreements in Place—including the Agency's consideration of YBS farmers.

For the reasons stated above, FCA is adopting as final, without change from the proposal, the definition of HVCRE as a credit facility secured by land or improved real property. In addition, the Agency is adopting, as proposed, the three criteria outlined above. The exclusions from the HVCRE definition, as well as related comments and FCA's responses, will be discussed in the next section of the preamble.

FCA's final rule is similar to the FBRAs' rule in most respects, but it differs in two general areas. The FBRAs' rule clarified the interpretation of certain terms generally to be consistent with their usage in other FBRA regulations or Call Report instructions. The FCA did not propose different interpretations of these terms, nor did the Agency propose to refer to these FBRA references. In addition, FCA proposed some differences where appropriate to accommodate the different regulatory, operational, and credit considerations of the System, while continuing to maintain appropriate safety and soundness. FCA's proposed definition of HVCRE exposure was intended to capture only those exposures that have increased risk characteristics in the acquisition, development, or construction of real property.

2. Exclusions From HVCRE Exposure Definition

Under FCA's HVCRE proposal, like the FBRA rule, four broad types of exposures were excluded from the definition of HVCRE exposure. These types of exposures are discussed in the following sections.

a. One- to Four-Family Residential Properties

Under paragraph (2)(i)(A) of FCA's proposed HVCRE definition, as in a similar provision of the FBRA rule, an HVCRE exposure did not include a credit facility financing the acquisition, development, or construction of properties that are one- to four-family residential properties, provided that the dwelling (including attached components such as garages, porches, and decks) represented at least 50 percent of the total appraised value of

[42] Farm Credit of Florida, ACA Letter, dated January 21, 2022, reiterated the System Comment Letter's questions and comments verbatim.

[43] Section 4.19 of the Act requires each System association, under policies of and subject to review and approval of its funding bank, to prepare a program for furnishing sound and constructive credit and related services to YBS farmers and ranchers. This requirement is implemented by FCA regulations at 12 CFR 614.4165.

[44] 86 FR 47601, 47603 (August 26, 2021).

[45] 86 FR 47601, 47604 (August 26, 2021).

the collateral secured by the first or subsequent lien.

Manufactured homes permanently affixed to the underlying property, when deemed to be real property under state law, would qualify for this proposed exclusion, as would construction loans secured by single family dwelling units, duplex units, and townhouses. Condominium and cooperative construction loans would qualify for this proposed exclusion, even if the loan was financing the construction of a building with five or more dwelling units, if the repayment of the loan came from the sale of individual condominium dwelling units or individual cooperative housing units.

This proposed exclusion would apply to all credit facilities that fall within its scope, whether rural home financing under § 613.3030 or one- to four-family residential property financing under § 613.3000(b). Similar to the reduced risk weight assigned to residential mortgage exposures under § 628.32(g)(1), a credit facility would qualify for this proposed exclusion only if the property securing the credit facility exhibited characteristics of residential property rather than agricultural property including, but not limited to, the requirement that the dwelling (including attached components such as garages, porches, and decks) represents at least 50 percent of the total appraised value of the collateral secured by the first or subsequent lien. If examiners determined that the property was not residential in nature, the credit facility would not qualify for this proposed exclusion.

Loans for multifamily residential property construction (such as apartment buildings where loan repayment is dependent upon apartment rental income) would not qualify for this proposed exclusion.[46]

Loans used solely to acquire undeveloped land for the purpose of constructing one- to four-family residential structures would not qualify for this proposed exclusion; the credit facility would also have to include financing for the construction of one- to four-family residential structures. Moreover, credit facilities that do not finance the construction of one- to four-family residential structures (as defined above), but instead solely finance improvements such as the laying of sewers, water pipes, and similar improvements to land, would not qualify for this proposed exclusion. A credit facility that combines the financing of land development and the construction of one- to four-family structures would qualify for this proposed exclusion.

FCA did not receive any comments on this proposed exclusion and is adopting the exclusion as proposed.

b. Agricultural Land

Under paragraph (2)(i)(C) of its proposed HVCRE definition, FCA proposed to exclude credit facilities financing ''agricultural land,'' as defined in FCA regulation § 619.9025, or real estate used as an integral part of an aquatic operation. FCA regulation § 619.9025 defines ''agricultural land'' as ''land improved or unimproved which is devoted to or available for the production of crops and other products such as but not limited to fruits and timber or for the raising of livestock.''

The proposed exclusion applied only to financing for the agricultural and aquatic needs of bona fide farmers, ranchers, and producers and harvesters of aquatic products under § 613.3000 of FCA regulations. It did not apply to loans for farm property construction or land development purposes.

FCA intended its proposed agricultural land exclusion to have the same scope as the agricultural land exclusion of the FBRAs. The FBRAs' definition of agricultural land has the same meaning as ''farmland'' in their Call Report forms and instructions.[47] They define farmland as ''all land known to be used or usable for agricultural purposes, such as crop and livestock production. Farmland includes grazing or pastureland, whether tillable or not and whether wooded or not.'' Loans for farm property construction and land development purposes are not ''farmland'' loans, and therefore such loans do not fall within the FBRAs' agricultural land exclusion. Unlike the FBRAs, FCA proposed to expressly include within the agricultural land exclusion real estate that is an integral part of an aquatic operation.

As in the FBRAs' final rule, loans for land development purposes and farm property construction would not have been eligible in FCA's proposed rule for the agricultural land exclusion. Loans made for land development purposes would include loans made to finance property improvements, such as laying sewers or water pipes preparatory to erecting new structures. Loans made for farm property construction would include loans made to finance the on-site construction of industrial, commercial, residential, or farm buildings. For the purposes of this exclusion, ''construction'' includes not only construction of new structures, but also additions or alterations to existing structures and the demolition of existing structures to make way for new structures.

Exposures to land in transition—agricultural land in the path of development—were not automatically excluded from the definition of HVCRE through the proposed agricultural land exclusion. These exposures would need to be evaluated against the three criteria of the HVCRE definition discussed in Section II.C.1 of this preamble—Scope of HVCRE Exposure Definition—as well as all exclusions discussed in this preamble, to determine whether they are HVCRE exposures.

FCA received several comments related to the proposed agricultural land exclusion. The System Comment Letter, and several other comment letters,[48] highlighted the section of the proposed rule preamble that explained the exclusion would not apply to loans for farm property construction, including farm buildings. They stated that not applying the exclusion to the construction of farm buildings was contradictory to the underlying premise of the agricultural land exclusion and did not recognize the lower risk of these types of ''on-farm facilities.'' [49] The letter requested that FCA add ''not related to on-going farming operations'' after the term ''farm buildings,'' indicating that the interdependent nature of System loan packages and the fact that farm construction projects are often related to ongoing farming operations reduces the risk of such projects.[50]

As discussed above, the scope of FCA's proposed agricultural land exclusion was similar to that of the FBRAs' (except that FCA's proposed exclusion added exposures to real estate that is an integral part of an aquatic operation). The FBRAs' exclusion includes exposures to ''farmland'' only and does not include loans for farm property construction. Therefore, the commenters' statement that not applying the exclusion to the

[46] Certain multifamily residential property may meet the ''other credit needs'' financing available to eligible borrowers as authorized by sections 1.11(a)(1) and 2.4(a)(1) of the Act and referenced in § 613.3000(b).

[47] See Federal Financial Institutions Examination Council (FFIEC) 031 and FFIEC 041—Instructions for Preparation of Consolidated Reports of Condition and Income.

[48] FCBT Letter dated January 24, 2022, Farm Credit of the Virginias, ACA Letter dated January 24, 2022, Capital Farm Credit, ACA Letter dated January 21, 2022, Farm Credit West, ACA Letter dated January 22, 2022 and Farm Credit of Florida, ACA Letter dated January 21, 2022.

[49] System Comment Letter dated January 19, 2022, page 3.

construction of farm buildings is contradictory to the underlying premise of the agricultural land exclusion is not correct.

In response to the commenters' request that FCA expand the scope of the proposed exclusion to include the construction of farm buildings related to ongoing farming operations, FCA notes, as discussed in Section II.C.1 of this preamble—Scope of HVCRE Exposure Definition, that farm building construction projects where repayment of the credit facility will be from ongoing farming operations do not meet the third criterion of the proposed HVCRE definition and would not be subject to the increased risk weight. The third criterion is that repayment of the credit facility is dependent on the future income or sales proceeds, or refinancing of, the real property.[50] This risk-weighting treatment reflects the lower relative risk characteristics of these exposures.

On the other hand, farm construction projects where repayment will depend on future income or the sales proceeds from the real property would meet the third criterion of the proposed HVCRE definition. Such projects have increased risk characteristics, justifying a higher risk weight compared to projects with repayment from ongoing operations. They would be assigned a higher risk weight under the FBRAs' rules and would be assigned a higher risk weight under FCA's proposed rule as well.

In discussing the proposed Agricultural Land exclusion, the System Comment Letter, as well as two other letters,[51] requested that FCA consider potential obstacles for YBS borrower entry into agriculture. These commenters stated that farm construction projects by YBS borrowers are often not part of ongoing farming operations and would potentially have higher costs of credit if subject to the 150 percent HVCRE risk weight. FCA believes excluding all YBS borrowers from the HVCRE risk weight would present safety and soundness concerns and detract from the objectives of this rule. However, as discussed in Section II.C.2.e of this preamble—Loans Originated for Less Than $500,000—the final rule includes an HVCRE exclusion for loans originated under $500,000, which will benefit some YBS borrowers.[52]

For the reasons stated above, FCA is adopting as final, without change from the proposal, the agricultural land exclusion.

c. Loans on Existing Income Producing Properties That Qualify as Permanent Financings

As in the FBRA rule, FCA proposed, in paragraph (2)(ii) of its definition of HVCRE exposure, to exclude credit facilities that finance the acquisition or refinance of existing income-producing real property secured by a mortgage on such property, so long as the cash flow generated by the real property covers the debt service and expenses of the property in accordance with the System institution's underwriting criteria for permanent loans. FCA also proposed, in part (2)(iii) of its definition of HVCRE, to exclude credit facilities financing improvements to existing income-producing real property secured by a mortgage on such property. The preamble to the proposed rule noted that examiners may review the reasonableness of a System institution's underwriting standards for permanent loans through the regular examination process to ensure the real estate lending policies are consistent with safe and sound banking practices.

Under the proposal, loans such as agribusiness or rural project financing transactions, among other types of loans, could qualify for the income-producing property exclusion if the cash flow being generated by the real property is sufficient to support the debt service and expenses of the real property in accordance with the System institution's underwriting criteria for permanent loans.

Loans that are not secured by existing income-producing real property, however, would not fall under this proposed exclusion. Such loans often pose a greater credit risk than permanent loans. FCA believes it is appropriate to classify these loans as HVCRE exposures and impose a 150 percent risk weight given their increased risk characteristics compared to other commercial real estate exposures (unless the loan satisfies one of the other exclusions). However, as discussed in Section II.C.3 of this preamble—Reclassification as a Non-HVCRE Exposure, the proposal would allow a System institution to reclassify these HVCRE exposures as non-HVCRE exposures if they satisfied the two conditions in paragraph (6) of the proposed rule.

FCA received one comment on the proposed exclusion for existing income producing properties that qualify as permanent financings. The System Comment Letter referenced a ''cash flow 'test' '' to determine the sufficiency of the cash flow generated by real property to support the debt service and expenses.[53] The Letter requested the test be conducted only once at loan origination and not be required again assuming the loan continues to pay as agreed. While neither the preamble to the proposed rule nor the rule text itself explicitly referenced a cash flow ''test'', FCA interprets the comment as reference to the underwriting analysis performed in determining whether a loan qualifies for this exclusion. The Agency is clarifying that once a loan has undergone this analysis at origination or purchase for the purpose of HVCRE classification, the institution does not need to reassess the loan again for that purpose. However, as with any permanent financing, the institution must have procedures in place for monitoring the ongoing quality of the loan. These procedures could include ongoing loan analysis.[54]

For the reasons stated above, FCA is adopting as final, without change from the proposal, the exclusion for loans on existing income producing properties that qualify as permanent financings.

d. Certain Commercial Real Property Projects

As in the FBRA rule, FCA proposed, in paragraph (2)(iv) of its HVCRE definition, to exclude from the definition of HVCRE exposure credit facilities for certain commercial real property projects that are underwritten in a safe and sound manner in accordance with proposed loan-to-value (LTV) limits and where the borrower has contributed a specified amount of capital to the project. A commercial real property project loan generally is used to acquire, develop, construct, improve, or refinance real property, and the primary source of repayment is dependent on the sale of the real property or the revenues from future income. Commercial real property project loans do not include ordinary business loans and lines of credit in which real property is taken as

[50] As discussed in Section II.C.1 of this preamble—*Scope of HVCRE Exposure Definition*—in the case of revolver loans secured by land or real property where more than 50 percent of the proposed use of the revolver funds is for acquisition, development, or construction of real property, the entire revolver would be subject to the HVCRE definition if it also meets the other two criteria and is not subject to an exclusion.

[51] FCBT Letter dated January 24, 2022, and Farm Credit of Florida Letter dated January 21, 2022.

[52] Page 30 of the 2022 Annual Report of the Farm Credit Administration shows that for all three categories of YBS loans, the average size of loans outstanding as of December 31, 2022, and of loans made in 2022 was less than $500,000.

[53] System Comment Letter dated January 19, 2022, page 3.

[54] FCA regulation § 614.4170 outlines the responsibilities of direct lenders to service the loans they make, including having policies and procedures in place to preserve the quality of sound loans and help correct deficiencies as they develop.

collateral. As it relates to the System, FCA believes this proposed exclusion is most relevant to agribusiness (processing and marketing entities and farm-related businesses) and rural project financing.

To qualify for this proposed exclusion, a credit facility that finances a commercial real property project would be required to meet four distinct criteria. First, the LTV ratio would have to be less than or equal to the applicable maximum set forth in proposed Appendix A. Second, the borrower would have to contribute capital of at least 15 percent of the real property's value to the project. Third, the 15 percent amount of contributed capital would have to be contributed prior to the institution's advance of funds (other than a nominal sum to secure the institution's lien on the real property). Fourth, the 15 percent amount of contributed capital would have to be contractually required to remain in the project until the loan could be reclassified as a non-HVCRE exposure. The proposed interpretations of terms relevant to the four criteria for this exclusion are discussed below.

i. Loan-to-Value Limits

To qualify for this exclusion from the HVCRE exposure definition, the FBRAs' rule requires that a credit facility be underwritten in a safe and sound manner in accordance with the Supervisory Loan-to-Value Limits contained in the Interagency Guidelines for Real Estate Lending Policies.[55] These Interagency Guidelines require banking institutions, for real estate loans, to establish internal LTV limits that do not exceed specified supervisory limits ranging from 65 percent for raw land to 85 percent for 1- to 4-family residential and improved property.

The FCA has not adopted these supervisory LTV limits.[56] Nevertheless, FCA examination guidance from 2009 makes clear that FCA expectations are consistent with the Interagency Guidelines, including the supervisory LTV limits.[57] FCA believes exposures should satisfy these LTV limits to qualify for this proposed exclusion to the HVCRE definition. In paragraph (2)(iv)(A) of the final rule, the Agency proposed to adopt these LTV limits, for the purpose of the HVCRE definition only, in a new Appendix A to part 628.

The System Comment Letter requested that FCA consider the potential impact of these proposed LTV limits on YBS lending. For the reasons discussed above, FCA is not providing an exclusion for all YBS borrowers. However, the final rule includes an HVCRE exclusion for loans originated under $500,000, which will benefit some YBS borrowers.

For the reasons stated above, FCA is adopting as final this provision of the proposed rule.

ii. Contributed Capital

Under paragraph (2)(iv)(B) and (C) of FCA's proposed definition of HVCRE exposures, borrowers must contribute capital of at least 15 percent of the real property's value to the project to qualify for the commercial real property projects exclusion. Cash, unencumbered readily marketable assets, paid development expenses out-of-pocket, and contributed real property or improvements would count as forms of capital for purposes of the 15 percent capital contribution criterion. A System institution could consider costs incurred by the project and paid by the borrower prior to the advance of funds by the System institution as out-of-pocket development expenses paid by the borrower.

FCA's proposed rule required the value of contributed property to be determined in accordance with FCA regulations at Part 614, Subpart F, which are generally similar to the FIRREA standards adopted in the FBRA rule.[58] Under the proposed rule, the value of the real property that could count toward the 15 percent contributed capital requirement would be reduced by the aggregate amount of any liens on the real property securing the HVCRE exposure. In addition, the preamble to the proposed rule explained that contributed property or improvements would have to be ''directly related'' to the project to be eligible to count towards the capital contribution. As explained in that preamble, under the proposed rule real estate not developed as part of the project would not be counted toward the capital contribution. FCA received various comments on the contributed capital requirement of the proposed rulemaking which are addressed below.

Cross-Collateralized Real Property and ''Directly Related'' Collateral

The System Comment Letter included a request for FCA to permit cross-collateralized real property or improvements to qualify as part of the capital contribution to an HVCRE project.[59] The Letter referenced the common practice of System institutions cross-collateralizing real estate collateral, and particularly the practice of a related party contributing collateral to support a loan to a YBS farmer so the farmer can obtain financing. The Letter explained that while the collateral might not be ''directly related'' to the project being financed, the collateral is pledged agricultural land integral to a borrower's overall operation and does not have the same risk profile as ''unrelated commercial development real estate projects.'' [60]

In response to this comment, the Agency is confirming that cross-collateralized property is permitted to count as a capital contribution to an HVCRE project. As explained in the preamble to the proposed rule, the value of the contributed real property must be reduced by the aggregate amount of any outstanding liens on the property for the purpose of calculating the 15 percent capital contribution.

In addition, the Agency has reconsidered its regulatory interpretation in the preamble to the proposed rule that contributed real property or improvements must be ''directly related'' to the project. Under the final rule, other real property contributed to a project does not have to be ''directly related'' to the project to count as capital contributions for the purpose of the commercial real property projects exclusion.

In not requiring real property to be ''directly related'' to a project to count towards the 15 percent capital

[55] See 12 CFR part 365, subpart A, Appendix A (FDIC); 12 CFR part 208, Appendix C (FRB); 12 CFR part 34, Appendix A (OCC).

[56] Section 1.10(a) of the Act and § 614.4200(b)(1) of FCA regulations require at least an 85 percent LTV ratio for long-term real estate mortgage loans that are comprised primarily of agricultural or rural property, except for loans that have government guarantees or are covered by private mortgage insurance. Under § 614.4200(b)(1), agricultural or rural property includes agricultural land and improvements thereto, a farm-related business, a marketing or processing operation, a rural residence, or real estate used as an integral part of an aquatic operation.

[57] Examination Bulletin FCA 2009–2, Guidance for Evaluating the Safety and Soundness of FCS Real Estate Lending (focusing on land in transition), December 2009.

[58] See FCA Informational Memorandum, Guidance on Addressing Personal and Intangible Property within Collateral Evaluation Policies and Procedures (§ 614.4245), August 29, 2016. On May 20, 2021, FCA issued a proposed rule on collateral evaluation requirements (86 FR 27308). FCA's Fall 2023 Unified Agenda and Review of Significant Regulatory Actions, which the FCA Board approved on August 14, 2023, indicates that the agency will be considering a reproposed rule on collateral evaluation requirements in July 2024. Depending on the eventual outcome of the rulemaking, FCA's collateral standards could deviate from the FIRREA standards in the future.

[59] The Farm Credit West, ACA Letter dated January 22, 2022, reiterated this comment. The CoBank Letter, dated January 20, 2021, asked for clarification on whether YBS loans, which often cross-collateralize, would be exempted from the HVCRE definition.

[60] System Comment Letter dated January 19, 2022, page 4.

contribution for the purposes of excluding a project from the HVCRE definition, FCA is deviating from the FBRAs' interpretation of their final rule. After careful consideration, FCA does not believe that the relation of real property to a project materially impacts the risk associated with accessing System collateral. Requiring real property to be ''directly related'' to the project is therefore not a necessary safety and soundness criterion.

Readily Marketable Assets

In line with the Interagency Guidelines for Real Estate Lending Policies,[61] FCA, in its proposed rule, interpreted the term ''unencumbered readily marketable assets'' to mean insured deposits, financial instruments, and bullion in which the System institution has a perfected interest. For assets to be considered ''readily marketable'' by a System institution, the institution's expectation would be that the financial instrument and bullion would be salable under ordinary circumstances with reasonable promptness at a fair market value determined by quotations based on actual transactions, an auction or similarly available daily bid and ask price market.[62]

The System Comment Letter asked FCA to clarify how often and to what extent institutions need to document that assets are readily marketable.[63] For the purpose of qualifying as contributed capital for an HVCRE project, the assets must be deemed readily marketable at the time of loan origination only. The assessment to determine whether an asset is readily marketable should address the depth, breadth, and liquidity of the respective markets as well as other liquidity risk indicators.

Abundance of Caution Collateral

The System Comment letter also requested that FCA ''make a distinction on real estate collateral taken as abundance of caution for purposes of the 15% capital contribution requirement''.[64] FCA regulation § 614.4240(a) defines abundance of caution, when used to describe decisions to require collateral, as circumstances in which collateral is taken when (1) it is not required by statute, regulation, or institution policy, and (2) the extension of credit could have been made without taking the collateral.

Borrowers must make a 15 percent capital contribution that meets the criteria outlined in paragraph (2)(iv)(B) of this final rule, among other requirements, for their loan to qualify for this exclusion from the HVCRE definition. As discussed above, such collateral can be cross-collateralized and does not have to be ''directly related'' to the project. Any collateral used to meet this requirement must satisfy the specified criteria, including collateral taken from the borrower in an abundance of caution.

YBS Borrowers

The Agency considered the impact of the contributed capital requirements on YBS borrowers and, for the reasons discussed above, is not providing an exclusion for all YBS borrowers. However, the final rule includes an HVCRE exclusion for loans originated under $500,000, which will benefit some YBS borrowers.

For the reasons stated above, FCA is adopting, as final, this provision of the proposed rule.

iii. Value Appraisal

Under paragraph (2)(iv)(B) of FCA's proposed definition of HVCRE exposures, the 15 percent capital contribution would be required to be calculated using the real property's value. An appraised ''as completed'' value is preferred; however, when an ''as completed'' value appraisal is not available FCA proposed to permit the use of an ''as is'' appraisal.[65] In addition, in its proposed rule FCA proposed to allow the use of a collateral evaluation of the real property in situations when the Agency's appraisal regulations [66] permit collateral evaluations to be used in lieu of appraisals. As explained in the proposed rule preamble, FCA's approach to real property valuation deviates from the FBRAs' regulatory language but is consistent with their interpretation of the regulation.

FCA did not receive any comments on this provision of the proposed rule and, as such, is adopting it as proposed.

iv. Project

Under paragraph (2)(iv)(B) of FCA's proposed definition of HVCRE exposures, the 15 percent capital contribution and the appraisal or collateral evaluation would be measured in relation to a ''project.'' As discussed in the proposed rule preamble, FCA expects that each project phase being financed by a credit facility have a proper appraisal or evaluation with an associated ''as completed'' or ''as is'' value. Where appropriate and in accordance with the System institution's applicable underwriting standards, a System institution may look at a multiphase project as a complete project rather than as individual phases.

FCA did not receive any comments on this provision of the proposed rule and, as such, is adopting it as proposed.

e. Loans Originated for Less Than $500,000

FCA is adding an HVCRE exclusion to paragraph (2)(v) of the final rule for loans originated for less than $500,000. FCA recognizes the potential administrative burden of tracking loans of this size. As reported in the System's Annual Information Statement as of December 30, 2022, 85 percent of System borrowers had at least one loan under $500,000,[67] for the purpose of HVCRE classification. This exclusion maintains a balance between providing regulatory relief to System institutions and limiting the potential risk from HVCRE exposures.

The System Comment Letter asked FCA for consideration of YBS borrowers in the final rule. The Letter asserted that the loans of YBS applicants may be defined as HVCRE due to their reliance on third-party agreements for repayment and the fact that they are often not part of ongoing farming operations, and it stated that this classification could be an obstacle for YBS borrowers obtaining financing. The Letter also asked FCA to consider the impact of the LTV limits and capital contribution requirements in the commercial real property projects exclusion on YBS borrowers.

FCA is committed to supporting the FCS's mission to serve YBS borrowers but the Agency must also ensure the

[61] See 12 CFR part 365, subpart A, Appendix A (FDIC); 12 CFR part 208, Appendix C (FRB); 12 CFR part 34, Appendix A (OCC).

[62] This interpretation is consistent with the definitions of ''unencumbered'' and ''marketable'' in FCA's liquidity regulation at § 615.5134.

[63] The Farm Credit West, ACA Letter dated January 22, 2022, reiterated this comment verbatim.

[64] System Comment Letter dated January 19, 2022, page 4.

[65] FCA intends that the terms ''as completed'' and ''as is,'' as used in the definition of HVCRE exposure, would have the same meaning as in the Interagency Appraisal and Evaluation Guidelines (December 2, 2010), issued by the OCC, the FRB, the FDIC, the Office of Thrift Supervision, and the National Credit Union Administration. Under these Guidelines, ''as completed'' reflects property's market value as of the time that development is expected to be completed, and ''as is'' means the estimate of the market value of real property in its current physical condition, use, and zoning as of the appraisal's effective date.

[66] See § 614.4260(c), which sets forth the types of real estate-related transactions that do not require appraisals.

[67] Page 57 of the 2022 Annual Information Statement of the Farm Credit System shows loans under $500,000 account for 85 percent of System borrowers and 16 percent of System loan volume at December 31, 2022.

safety and soundness of the System. The addition of an exclusion for loans under $500,000 will benefit some YBS borrowers.[68] In addition, many YBS borrowers and System borrowers in general will continue to have access to loan guarantees through programs such as the Farm Service Agency guarantee programs. The guaranteed portion of these loans will continue to receive a reduced risk weight in accordance with FCA's capital rules and will not be subject to the 150 percent risk weight for HVCRE exposures.[69]

For the reasons discussed above, FCA is adding an exclusion for loans originated for less than $500,000 to the HVCRE definition.

f. Consideration of Additional Exclusions

As detailed below, the System Comment Letter, as well as several other comment letters, asked FCA to consider various additional exclusions from the HVCRE definition.[70] The requested exclusions included project financing of public and private facilities; agricultural production or processing facilities with contractual purchase agreements in place; minor improvements or alterations to real property; credit facilities where repayment would come from the borrower's ongoing business; and de minimis levels of financing. FCA considered each of these requested exclusions as discussed below.

i. Project Financing of Public and Private Facilities

The System Comment Letter (supported by the Northwest Letter), the CoBank Letter, and the FCBT Letter requested an exclusion from the HVCRE definition for project financing of public and private facilities, such as rural infrastructure projects, where contractual agreements to purchase the product produced are in place before a facility is constructed. Commenters expressed concern that the proposed HVCRE definition would include System project financing, and therefore impact the financing of crucial rural infrastructure projects.

The commenters stated that these projects may not have the necessary collateral support required by the proposed rule but highlighted mitigating factors against risk: the credit evaluation of a project independent of the sponsor, focus on the creditworthiness of counterparties to the contractual agreements, and the bankruptcy remoteness of the projects from their sponsors.[71] They differentiated System project financings from other forms of corporate financing in which lenders evaluate the financial condition of corporate entities, not individual projects. In addition, they stated that the FBRAs' intent with the HVCRE risk weight was to capture speculative commercial real estate loans.

As an initial matter, FCA notes that FCA Bookletter-070—Revised Capital Treatment for Certain Water and Wastewater Exposures—and Bookletter-053—Revised Regulatory Capital Treatment for Certain Electric Cooperatives—assign reduced risk weights to certain project financing exposures, including some exposures in the construction phase.[72] Specifically, Bookletter-070 assigns a reduced risk weight to certain rural water and wastewater (RWW) construction exposures.[73] Bookletter-053 assigns a reduced risk weight to certain electric cooperative construction loans for new baseload power plants. This rule will not affect the reduced risk weights for the project finance construction exposures that these bookletters assign, even for exposures that are HVCRE exposures.

In response to the comments regarding the standalone nature of System project financings, FCA agrees that this characteristic can be a risk mitigant to such projects in isolating them from any financial difficulties of their sponsors. However, the Agency also believes that the limited recourse to project sponsors could be to the detriment of such financings. If the project were to default, the lender could be limited to accessing the project's collateral, and any contributed capital, alone. They may not have any recourse to the project sponsor's assets. More importantly, project finance loans in the construction phase share many of the same risks as other construction loans regardless of recourse to project sponsors. These risks are discussed later in this section. FCA does not therefore believe that the independent nature of such financings is a sound enough reason alone to exclude these projects from the HVCRE definition. As discussed in Section II.C.3 of this preamble—Reclassification as a Non-HVCRE Exposure—the HVCRE risk weight no longer applies once the project is reclassified as non-HVCRE.

The System Comment Letter also referenced the focus on the creditworthiness of contractual agreement counterparties as another risk mitigant to project financings. FCA agrees the creditworthiness of counterparties to the contractual agreements entered into by public and private projects is key to mitigating the risks of these projects. However, if a project depends on a counterparty's contractual payments to repay its construction phase debt, the inability of the counterparty to meet its obligations increases the risk that the project's loan will default. Counterparty credit risk cannot be avoided and can translate to elevated risk for construction loan projects heavily reliant on counterparties for repayment.

FCA believes there are other risk factors to consider in relation to public and private facility project financing that justify inclusion of these credits in the HVCRE definition. In addition to the counterparty credit risk mentioned above, some additional risks include project delays, cost overruns, project obsolescence, contractor risk, and risks from shifting market dynamics.

As discussed in Section II.C.1 of this preamble—Scope of HVCRE Exposure Definition—project delays and cost overruns have been a particular challenge to System construction loans recently, including in the project financing sector, and the impact in some cases has been material. If construction timelines and costs continue to be adversely affected, such supply chain issues could pose a credit risk to System institutions. The comment letters did not address these risks.

Further, the reduced risk weights that Bookletter-070 and Bookletter-053 assign to RWW and electric cooperative construction exposures, as discussed above, do not support exempting all project finance construction exposures from HVCRE exposure risk weighting. The reduced risk weights for RWW and electric cooperative exposures, including exposures during the construction phase, are supported by unique characteristics of those

[68] Page 30 of the 2022 Annual Report of the Farm Credit Administration shows that for all three categories of YBS loans, the average size of loans outstanding as of December 31, 2022, and of loans made in 2022 was less than $500,000.

[69] Under § 628.32(a)(1)(i)(B) the portion of an exposure that is directly and unconditionally guaranteed by the U.S. Government, its central bank, or a U.S. Government agency is risk-weighted at 0-percent. Under 628.32(a)(1)(ii) the portion of an exposure that is conditionally guaranteed by the U.S. Government, its central bank, or a U.S. Government agency is risk-weighted at 20-percent.

[70] The Northwest Letter, dated January 24, 2022, encouraged FCA, without discussion, to consider all five exceptions proposed in the System Comment Letter.

[71] FCA understands the commenters are referring to projects that are structured to be legally separate from the sponsor and not liable for the sponsors' debts in bankruptcy.

[72] The reduced risk weights are lower than those that would otherwise apply under FCA regulation § 628.32.

[73] In Section II.C.3. of this preamble—Reclassification as a Non-HVCRE Exposure—FCA explains revisions it plans to make to BL–070 before this HVCRE rule becomes effective.

exposures that may not exist with other project finance exposures.

As Bookletter-070 notes, RWW plays a critical role in agricultural and rural America, but its infrastructure is aging, and it can be difficult for rural communities to finance improvements. The services provided by RWW facilities are essential, which contributes to the overall strength and stability of the industry. Moreover, many RWW facilities are able to adjust rates as needed to support repayment, thus reducing the likelihood of default. FCA determined that a reduced risk weight for exposures that satisfied specified quantitative and qualitative safety and soundness criteria would provide more capacity for System institutions to provide RWW funding without taking on excessive risk. Similarly, the reduced risk weight for electric cooperatives that satisfy criteria specified in Bookletter-053 was supported by the unique characteristics and lower risk profile of the industry segment. The reduced risk weights assigned by bookletter to RWW and electric cooperative construction exposures do not support excluding project finance construction generally from the HVCRE risk weight.

For the reasons stated above, FCA is not including a general exclusion for project financing in the final HVCRE rule. However, as discussed in Section II.5 of this preamble—Impact on Prior FCA Board Actions—certain project financing loans will not be subject to the HVCRE risk-weight under the provisions of Bookletter-053 and a revised Bookletter-070.

ii. Agricultural Production or Processing Facilities With Contractual Purchase Agreements in Place

The System Comment Letter (supported by the Northwest Letter) asked for an explicit exclusion from the HVCRE definition for agricultural or processing facilities where contractual agreements are in place, prior to construction of the facility, to purchase the output from these facilities. The System Comment Letter specifically referenced ''loans to finance construction of poultry or other livestock barns that are originated with an integrator contract to support the lending structure.'' [74] Poultry and other livestock facility construction projects are subject to the same risks as any construction project, namely project cost overruns and time delays. These risks are discussed in Section I.B.3 of this preamble—ADC Lending Risk and HVCRE Risk Weight. The commenters did not provide a risk-based justification, or any other justification, for excluding these types of loans from the HVCRE definition, and FCA does not believe such a justification exists.

The System Comment Letter did ask FCA to consider the potential impact on YBS borrowers by not providing an exclusion for loans with third-party integrator agreements. As explained in Section II.C.1 of this preamble—Scope of HVCRE Exposure Definition—a borrower dependent on payments from an integrator for repayment of debt would meet the criteria for classification as an HVCRE exposure unless the loan qualifies for an HVCRE exclusion. As a reminder, if repayment of the poultry or other livestock construction loan comes from the ongoing business of the borrower, the loan would not meet the HVCRE criteria. As discussed above, FCA is not providing an exclusion for all YBS borrowers. However, some YBS and other borrowers dependent on integrator agreements for loan repayment will benefit from the exclusion of loans under $500,000 from the definition of HVCRE in the final rule. In addition, YBS loans may have access to loan guarantees to reduce risk weights.

For the reasons stated above, FCA is not adopting an HVCRE exclusion for agricultural or processing facilities where contractual agreements are in place.

iii. Minor Improvements or Alterations to Real Property

The System Comment Letter (supported by the Northwest Letter) stated that FCA's proposed HVCRE definition included construction loans for ''additions or alterations'' regardless of materiality and requested an exclusion for minor improvements or alterations to real property.[75] The letter indicated that unless a minor improvement request was a modification to an existing permanent financing it would be classified as HVCRE.

As an initial matter, the Letter's suggestion that if a minor improvement request is a modification to an existing permanent financing it would not be classified as an HVCRE exposure is not necessarily correct. As the preamble to the proposed rule explains, when a System institution modifies a loan or if a project is altered in a manner that materially [76] changes the underwriting of a credit facility, the institution must treat the loan as a new exposure and must evaluate it to determine whether or not it is an HVCRE exposure.[77]

In response to the request for an exclusion for minor improvements or alterations to real property, the Agency's exclusion for loans under $500,000 will provide relief for these types of financings. In addition, the final rulemaking does have an exclusion for improvements to existing income producing improved real property if the cash flow generated by the property is sufficient to support the debt service and expenses of the real property in line with permanent financing criteria. Unless the loan to make minor improvements or alterations will be repaid from future income or sale of the project's real property, it would not fall under the definition of HVCRE.

For the reasons stated above, FCA is not adopting an HVCRE exclusion for minor improvements or alterations to real property.

iv. Credit Facilities Where Repayment Would Be From the Ongoing Business of the Borrower

The System Comment Letter (supported by the Northwest Letter) requested an explicit exclusion for credit facilities where repayment would come from the borrower's ongoing business.[78] An explicit exclusion for these credit facilities is not warranted, because such an exclusion is clear from the existing regulatory language.

The definition of HVCRE in the proposed rule includes a criterion that credit facilities where repayment is dependent on future income or the sale of the real estate would be considered HVCRE. Implicit in this criterion is that repayment from the ongoing business of the borrower would exclude a credit facility from being classified as HVCRE. In addition, in the preamble to the proposed rule, FCA explicitly stated that credit facilities that will be repaid from the borrower's ongoing business would not be classified as HVCRE.[79] FCA does not believe changing the final rule to incorporate an explicit exclusion is warranted. Instead, FCA reiterates that a credit facility for which ongoing

[74] System Comment Letter dated January 19, 2022, page 5. The FCBT Letter dated January 24, 2022, reiterated the System Comment Letter's comment verbatim. The CoBank Letter, dated January 20, 2021, summarized this comment, asking for clarification.

[75] The Farm Credit of Florida, ACA Letter, dated January 21, 2022, repeated the System Comment Letter's comment verbatim.

[76] Material changes may include increases to the loan amount, changes to the size and scope of the project, or removing all or part of the 15 percent minimum capital contribution in a project.

[77] 86 FR 47601, 47606 (August 26, 2021).

[78] The Farm Credit West, ACA Letter dated January 22, 2022 reiterated this comment verbatim.

[79] 86 FR 47601, 47606 (August 26, 2021).

income covers repayment would not meet the definition of HVCRE.

For the reasons stated above, FCA is not adopting an HVCRE exclusion for credit facilities where repayment would be from the ongoing business of the borrower.

v. De Minimis Financings

The System Comment Letter (supported by the Northwest Letter) asked FCA to consider an exclusion for a de minimis level of financing determined by each institution as a percentage of risk funds.[80] The final rule includes an exclusion for loans under $500,000, which as discussed in Section II.C.2.e of this preamble—Loans Originated for Less Than $500,000—will provide administrative relief without introducing material risk exposure to the System. The Agency believes establishing a de minimis level as a percentage of capital or some other similar metric would allow for higher potential risk exposure than a dollar threshold would. Large institutions with considerable capital, for example, would be able to amass potentially material amounts of HVCRE volume if a capital-based threshold was set. The $500,000 exclusion would apply to all loans under $500,000 regardless of an institution's size or capital levels.

For the reasons stated above, FCA is not adopting an HVCRE exclusion for de minimis financings.

3. Reclassification as a Non-HVCRE Exposure

Under the proposal, a System institution would be allowed to reclassify an HVCRE exposure as a non-HVCRE exposure when the substantial completion of the development or construction on the real property has occurred and the cash flow generated by the property covered the debt service and expenses on the property in accordance with the institution's loan underwriting standards for permanent financings. Each System institution should have prudent, clear, and measurable underwriting standards, which we may review through the examination process.

The System Comment Letter requested FCA clarify its expectations for when an HVCRE project can be reclassified. The letter asked for clarification of ''the period that follows project completion to determine whether a projected cash flow is acceptable for purposes of reclassification.'' [81] In addition, the letter requested further guidance on how to calculate projected cash flows for a property ''owned by the business'' when these are not ''separately provided by the borrower''.[82]

As stated in the proposed rule, institutions should defer to their loan underwriting criteria for permanent financings when determining if an HVCRE exposure is generating sufficient cash flow to support the debt service and expenses of the real property. FCA does not have an expectation for a specific period following project completion to demonstrate adequate cash flows. Such a criterion should be clearly stated in an institution's loan underwriting standards. Similarly, the Agency is not specifying in the final rule how to calculate cash flows. Regardless of how cash flow information is presented by a borrower, the institution should have processes in place to adequately analyze and project cash flows.

FCA is adopting this part of the proposed rule without change.

4. Applicability Only to Loans Made After January 1, 2025

In consideration of the changes this rule would require, only loans made after January 1, 2025, the planned effective date of this rule, would be subject to the HVCRE risk-weighting requirements. Loans made prior to January 1, 2025 could continue to be risk-weighted as they are under the pre-existing version of the rule.

After January 1, 2025, when a System institution modifies a loan or if a project is altered in a manner that materially changes the underwriting of the credit facility (such as increases to the loan amount, changes to the size and scope of the project, or removing all or part of the 15 percent minimum capital contribution in a project), the institution must treat the loan as a new exposure and reevaluate the exposure to determine whether or not it is an HVCRE exposure.

5. Impact on Prior FCA Board Actions

Existing FCA Bookletter BL–070 authorizes System institutions to assign a 50- or 75-percent risk weight for RWW facilities that satisfy certain criteria, but it does not permit these risk weights for exposures when a RWW facility is not fully operational due to initial construction or major renovation. RWW exposures subject to a 50- or 75-percent risk weight under BL–070 will continue to receive these risk weights after this HVCRE rule becomes effective.

Bookletter-070 currently provides that exposures not subject to the 50- or 75-percent risk weight are assigned risk weights in accordance with Part 628 of FCA's regulations. Because this HVCRE rule is not yet in effect, these exposures are currently risk weighted at 100-percent as corporate exposures under § 628.32(f)(1) when they are in the construction phase. However, as this bookletter is currently written, once the HVCRE risk weight becomes effective such construction exposures would be assigned the HVCRE risk weight if the HVCRE definition were met and no exclusions applied.

Before the rule's planned effective date of January 1, 2025 (which is before BL–070's existing sunset date of November 2025), FCA plans to revise BL–070 to provide that RWW construction exposures not subject to a 50-or 75-percent risk weight under the bookletter will continue to be risk-weighted as corporate exposures. FCA plans to revise the risk weight of these exposures because of the unique characteristics of RWW exposures discussed above.

Similarly, electric cooperative exposures assigned 20- or 50-percent risk weights under FCA Bookletter BL–053, including exposures to some power plants that are in the construction phase, will continue to receive these risk weights under the bookletter even after this rule becomes effective. Under the bookletter, electric cooperative exposures that are not assigned a 20- or 50-percent risk weight are subject to the ''current'' (as of the 2007 adoption of the bookletter) regulatory risk weight under former § 615.5211,[83] which was 100 percent.[84] Therefore, under the bookletter, electric cooperative construction exposures that are not assigned a 20- or 50-percent risk weight will be assigned a 100 percent risk weight and will not be subject to risk weights in Part 628 (including the new HVCRE risk weight).

[80] The Farm Credit of Florida, ACA Letter, dated January 21, 2022, and the Farm Credit West, ACA Letter, dated January 22, 2022, repeated the System Comment Letter's comment verbatim.

[81] System Comment Letter, page 4.

[82] *Id.*

[83] FCA rescinded § 615.5211 when the capital rule it adopted in 2016, including the risk weights in § 628.32, became effective on January 1, 2017.

[84] Under former § 615.5211(d) as it existed in 2007, the 100-percent risk weight category comprised standard risk assets such as those typically found in a loan or lease portfolio. In addition, former § 615.5211(d)(1) provided that the 100-percent risk weight category included all claims on private obligors that were not included in another category and § 615.5211(12) provided that the category included all other assets not specified elsewhere.

III. Regulatory Analysis

A. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), FCA hereby certifies the final rule would not have a significant economic impact on a substantial number of small entities. Each of the banks in the System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, System institutions are not ''small entities'' as defined in the Regulatory Flexibility Act.

B. Congressional Review Act

Under the provisions of the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Management and Budget's Office of Information and Regulatory Affairs has determined that this final rule is not a ''major rule'' as the term is defined at 5 U.S.C. 804(2).

List of Subjects in 12 CFR Part 628

Accounting, Agriculture, Banks, Banking, Capital, Government securities, Investments, Rural areas.

For the reasons stated in the preamble, the Farm Credit Administration amends part 628 of chapter VI, title 12 of the Code of Federal Regulations as follows:

PART 628—CAPITAL ADEQUACY OF SYSTEM INSTITUTIONS

■ 1. The authority citation for part 628 continues to read as follows:

Authority: Secs. 1.5, 1.7, 1.10, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.3A, 4.9, 4.14B, 4.25, 5.9, 5.17, 8.0, 8.3, 8.4, 8.6, 8.8, 8.10, 8.12 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2018, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2154a, 2160, 2202b, 2211, 2243, 2252, 2279aa, 2279aa–3, 2279aa–4, 2279aa–6, 2279aa–8, 2279aa–10, 2279aa–12); sec. 301(a), Pub. L. 100–233, 101 Stat. 1568, 1608, as amended by sec. 301(a), Pub. L. 103–399, 102 Stat 989, 993 (12 U.S.C. 2154 note); sec. 939A, Pub. L. 111–203, 124 Stat. 1326, 1887 (15 U.S.C. 78o–7 note).

■ 2. Amend § 628.2 by adding paragraph (6) to the definition of ''Corporate exposure'' and a new definition, in alphabetical order, for ''High volatility commercial real estate (HVCRE) exposure'' to read as follows:

§ 628.2 Definitions.

* * * * *

Corporate exposure * * *

* * * * *

(6) A high volatility commercial real estate (HVCRE) exposure;

* * * * *

High volatility commercial real estate (HVCRE) exposure means:

(1) A credit facility secured by land or improved real property that, prior to being reclassified by the System institution as a non-HVCRE exposure pursuant to paragraph (6) of this definition:

(i) Primarily finances, has financed, or refinances the acquisition, development, or construction of real property;

(ii) Has the purpose of providing financing to acquire, develop, or improve such real property into income producing real property; and

(iii) Is dependent upon future income or sales proceeds from, or refinancing of, such real property for the repayment of such credit facility.

(2) An HVCRE exposure does not include a credit facility financing:

(i) The acquisition, development, or construction of properties that are:

(A) One- to four-family residential properties, provided that the dwelling (including attached components such as garages, porches, and decks) represents at least 50 percent of the total appraised value of the collateral secured by the first or subsequent lien. Credit facilities that do not finance the construction of one- to four-family residential structures, but instead solely finance improvements such as the laying of sewers, water pipes, and similar improvements to land, do not qualify for the one- to four-family residential properties exclusion;

(B) [Reserved]

(C) Agricultural land, as defined in § 619.9025 of this chapter, or real estate used as an integral part of an aquatic operation. This provision applies only to financing for the agricultural and aquatic needs of bona fide farmers, ranchers, and producers and harvesters of aquatic products under § 613.3000 of this chapter. This provision does not apply to loans for farm property construction and land development purposes;

(ii) The acquisition or refinance of existing income-producing real property secured by a mortgage on such property, if the cash flow being generated by the real property is sufficient to support the debt service and expenses of the real property, in accordance with the System institution's applicable loan underwriting criteria for permanent financings;

(iii) Improvements to existing income producing improved real property secured by a mortgage on such property, if the cash flow being generated by the real property is sufficient to support the debt service and expenses of the real property, in accordance with the System institution's applicable loan underwriting criteria for permanent financings; or

(iv) Commercial real property projects in which:

(A) The loan-to-value ratio is less than or equal to the applicable loan-to-value limit set forth in Appendix A to this part;

(B) The borrower has contributed capital of at least 15 percent of the real property's appraised, ''as completed'' value to the project. The use of an ''as is'' appraisal is allowed in instances where an ''as completed'' value appraisal is not available. The use of an evaluation of the real property instead of an appraisal to determine the ''as completed'' appraised value is allowed if § 614.4260(c) of this chapter permits evaluations to be used in lieu of appraisals. The contribution may be in the form of:

(*1*) Cash;

(*2*) Unencumbered readily marketable assets;

(*3*) Paid development expenses out-of-pocket;

or

(*4*) Contributed real property or improvements; and

(C) The borrower contributed the amount of capital required by paragraph (2)(iv)(B) of this definition before the System institution advances funds (other than the advance of a nominal sum made in order to secure the System institution's lien against the real property) under the credit facility, and such minimum amount of capital contributed by the borrower is contractually required to remain in the project until the HVCRE exposure has been reclassified by the System institution as a non-HVCRE exposure under paragraph (6) of this definition.

(v) Loans originated for less than $500,000.

(3) An HVCRE exposure does not include any loan made prior to January 1, 2025.

(4) An HVCRE exposure does not include a credit facility reclassified as a non-HVCRE exposure under paragraph (6) of this definition.

(5) Value of contributed real property: For the purposes of this HVCRE exposure definition, the value of any real property contributed by a borrower as a capital contribution is the appraised value of the property as determined under standards prescribed in accordance with FCA regulations at

subpart F of part 614 of this chapter, in connection with the extension of the credit facility or loan to such borrower.

(6) Reclassification as a non-HVCRE exposure: For purposes of this HVCRE exposure definition and with respect to a credit facility and a System institution, a System institution may reclassify an HVCRE exposure as a non-HVCRE exposure upon:

(i) The substantial completion of the development or construction of the real property being financed by the credit facility; and

(ii) Cash flow being generated by the real property being sufficient to support the debt service and expenses of the real property, in accordance with the System institution's applicable loan underwriting criteria for permanent financings.

(7) [Reserved].

* * * * *

■ 3. Amend § 628.32 by adding paragraph (j) to read as follows:

§ 628.32 General risk weights.

* * * * *

(j) *High volatility commercial real estate (HVCRE) exposures.* A System institution must assign a 150-percent risk weight to an HVCRE exposure.

* * * * *

■ 4. Amend § 628.63 by adding entry (b)(8) to Table 3 to read as follows:

§ 628.63 Disclosures.

* * * * *

TABLE 3 TO § 628.63—CAPITAL ADEQUACY

Quantitative disclosures.	(b) Risk-weighted assets for:
* * * * *	
	(8) HVCRE exposures;
* * * * *	

* * * * *

■ 5. Add Appendix A to Part 628 to read as follows:

Appendix A to Part 628—Loan-to-Value Limits for High Volatility Commercial Real Estate Exposures

Table A sets forth the loan-to-value limits specified in paragraph (2)(iv)(A) of the definition of high volatility commercial real estate exposure in § 628.2.

TABLE A—LOAN-TO-VALUE LIMITS FOR HIGH VOLATILITY COMMERCIAL REAL ESTATE EXPOSURES

Loan category	Loan-to-value limit (percent)
Raw Land	65
Land development	75
Construction:	
Commercial, multifamily,[1] and other non-residential	80
1- to 4-family residential	85
Improved property	85
Owner-occupied 1- to 4-family and home equity	[2] 85

[1] Multifamily construction includes condominiums and cooperatives.

[2] If a loan is covered by private mortgage insurance, the loan-to-value (LTV) may exceed 85 percent to the extent that the loan amount in excess of 85 percent is covered by the insurance. If a loan is guaranteed by Federal, State, or other governmental agencies, the LTV limit is 97 percent.

The loan-to-value limits should be applied to the underlying property that collateralizes the loan. For loans that fund multiple phases of the same real estate project (*e.g.,* a loan for both land development and construction of an office building), the appropriate loan-to-value limit is the limit applicable to the final phase of the project funded by the loan; however, loan disbursements should not exceed actual development or construction outlays. In situations where a loan is fully cross-collateralized by two or more properties or is secured by a collateral pool of two or more properties, the appropriate maximum loan amount under loan-to-value limits is the sum of the value of each property, less senior liens, multiplied by the appropriate loan-to-value limit for each property. To ensure that collateral margins remain within the limits, System institutions should redetermine conformity whenever collateral substitutions are made to the collateral pool.

Dated: March 29, 2024.

Ashley Waldron,

Secretary to the Board, Farm Credit Administration.

[FR Doc. 2024–07060 Filed 4–9–24; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Part 12

[CBP Dec. 24–09]

RIN 1515–AE82

Imposition of Import Restrictions on Archaeological and Ethnological Material of Pakistan

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the U.S. Customs and Border Protection (CBP) regulations to reflect the imposition of import restrictions on archaeological and ethnological materials from the Islamic Republic of Pakistan (Pakistan). These restrictions are imposed pursuant to an agreement between the United States and Pakistan, entered into under the authority of the Convention on Cultural Property Implementation Act. This document amends the CBP regulations, adding Pakistan to the list of countries which have bilateral agreements with the United States imposing cultural property import restrictions, and contains the Designated List, which describes the archaeological and ethnological materials to which the restrictions apply.

DATES: Effective on April 10, 2024.

FOR FURTHER INFORMATION CONTACT: For legal aspects, W. Richmond Beevers, Chief, Cargo Security, Carriers and Restricted Merchandise Branch, Regulations and Rulings, Office of Trade, (202) 325–0084, *otrculturalproperty@cbp.dhs.gov.* For operational aspects, Julie L. Stoeber, Chief, 1USG Branch, Trade Policy and Programs, Office of Trade, (202) 945–7064, *1USGBranch@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Convention on Cultural Property Implementation Act (Pub. L. 97–446, 19 U.S.C. 2601 *et seq.*) (CPIA), which implements the 1970 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (823 U.N.T.S. 231 (1972)) (Convention), allows for the conclusion of an agreement between the United States and another party to the Convention to impose import restrictions on certain archaeological and ethnological material. Pursuant to the CPIA, the United States entered into a bilateral agreement with the Islamic Republic of Pakistan (Pakistan) to impose import restrictions on certain archaeological and ethnological material of Pakistan. This rule announces that the United States is now imposing import restrictions on certain archaeological and ethnological material of Pakistan through January 30, 2029. This period may be extended for additional periods, each extension not to exceed 5 years, if it is determined that the factors justifying the initial agreement still pertain and no cause for suspension of the agreement exists (19 U.S.C. 2602(e); § 12.104g(a) of title 19 of the Code of Federal Regulations (19 CFR 12.104g(a))).

Determinations

Under 19 U.S.C. 2602(a)(1), the United States must make certain determinations before entering into an agreement to impose import restrictions under 19 U.S.C. 2602(a)(2). On August 29, 2022, the Assistant Secretary for Educational and Cultural Affairs, United States Department of State, after consultation with and recommendation by the Cultural Property Advisory Committee, made the determinations required under the statute with respect to certain archaeological and ethnological material originating in Pakistan that is described in the Designated List set forth below in this document.

These determinations include the following: (1) that the cultural patrimony of Pakistan is in jeopardy from the pillage of archaeological material representing Pakistan's cultural heritage dating from approximately 2,000,000 Years Before Present [1] to A.D. 1750, and ethnological material representing Pakistan's diverse history, ranging in date from approximately A.D. 800 to 1849 (19 U.S.C. 2602(a)(1)(A)); (2) that the Pakistani government has taken measures consistent with the Convention to protect its cultural patrimony (19 U.S.C. 2602(a)(1)(B)); (3) that import restrictions imposed by the United States would be of substantial benefit in deterring a serious situation of pillage and remedies less drastic are not available (19 U.S.C. 2602(a)(1)(C)); and (4) that the application of import restrictions as set forth in this final rule is consistent with the general interests of the international community in the interchange of cultural property among nations for scientific, cultural, and educational purposes (19 U.S.C. 2602(a)(1)(D)). The Assistant Secretary also found that the material described in the determinations meets the statutory definition of ''archaeological or ethnological material of the State Party'' (19 U.S.C. 2601(2)).

The Agreement

On January 30, 2024, the Governments of the United States and Pakistan signed a bilateral agreement, ''Agreement Between the Government of the United States of America and the Government of the Islamic Republic of Pakistan Concerning the Imposition of Import Restrictions on Categories of Archaeological and Ethnological Materials of Pakistan'' (''the Agreement''), pursuant to the provisions of 19 U.S.C. 2602(a)(2). The Agreement entered into force on January 30, 2024, following the exchange of diplomatic notes, and enables the promulgation of import restrictions on certain categories of archaeological material ranging in date from the Lower Paleolithic Period (approximately 2,000,000 Years Before Present) through A.D. 1750, as well as certain categories of ethnological material associated with Pakistan's diverse history from A.D. 800 through 1849. A list of the categories of archaeological and ethnological material subject to the import restrictions is set forth later in this document.

Restrictions and Amendment to the Regulations

In accordance with the Agreement, importation of material designated below is subject to the restrictions of 19 U.S.C. 2606 and 19 CFR 12.104g(a) and will be restricted from entry into the United States unless the conditions set forth in 19 U.S.C. 2606 and 19 CFR 12.104c are met. CBP is amending 19 CFR 12.104g(a) to indicate that these import restrictions have been imposed.

Import restrictions listed at 19 CFR 12.104g(a) are effective for no more than 5 years beginning on the date on which an agreement enters into force with respect to the United States. This period may be extended for additional periods of not more than 5 years if it is determined that the factors which justified the agreement still pertain and no cause for suspension of the agreement exists. Therefore, the import restrictions will expire on January 30, 2029, unless extended.

Designated List of Archaeological and Ethnological Material of Pakistan

The Agreement between the United States and Pakistan includes, but is not limited to, the categories of objects described in the Designated List set forth below. Importation of material on this list is restricted unless the material is accompanied by documentation certifying that the material left Pakistan legally and not in violation of the export laws of Pakistan.

The Designated List includes archaeological and ethnological material from Pakistan. The archaeological material in the Designated List includes, but is not limited to, objects made of stone, ceramic, faience, clay, metal, plaster, stucco, painting, ivory, bone, glass, leather, bark, vellum, parchment, paper, textiles, wood, shell, and/or other organic materials, as well as human remains ranging in date from the Lower Paleolithic Period through A.D. 1750. The ethnological material in the Designated List includes, but is not limited to, architectural materials and manuscripts ranging in date from A.D. 800 through 1849.

Categories of Archaeological and Ethnological Material

(I) Archaeological Material
- (A) Stone
- (B) Ceramic, Faience, and Fired Clay
- (C) Metal
- (D) Plaster, Stucco, and Unfired Clay
- (E) Paintings
- (F) Ivory and Bone
- (G) Glass
- (H) Leather, Birch Bark, Vellum, Parchment, and Paper
- (I) Textiles
- (J) Wood, Shell, and other Organic Material
- (K) Human Remains

(II) Ethnological Material
- (A) Architectural Materials
- (B) Manuscripts

Approximate Simplified Chronology of Well-Known Periods:

(a) *Paleolithic, Neolithic, and Chalcolithic:* c. 2,000,000 Years Before Present–3500 B.C.

(b) *Bronze Age (Pre-Indus, Indus, and Post-Indus Periods):* c. 3500–1500 B.C.

(c) *Iron Age:* c. 1500–600 B.C.

(d) *Early Historic Period (Achaemenid, Macedonian, and*

[1] ''Years Before Present'' is commonly used instead of ''B.C.'' or ''A.D.'' within archaeology when radiocarbon dating or other similar dating techniques are utilized.

Mauryan Empires; Greco-Bactrian, Indo-Greek, Indo-Scythian, and Indo-Parthian Kingdoms; Gandharan Culture; Kushan Empire; Kushano-Sasanian Period; Gupta Empire; and Turk Shahi Dynasty): c. 600 B.C.–A.D. 712.

(e) *Middle Historic Period (Umayyad Caliphate, Hindu Shahi, Habbari, Ghaznavid, and Ghurid Dynasties):* c. A.D. 712–1206.

(f) *Late Historic Period (Delhi Sultanate; Mughal Empire; Sikh Empire):* c. A.D. 1206–1849

(I) Archaeological Material

(A) *Stone*

(1) Architectural Elements—Primarily in limestone, marble, sandstone, and steatite schist, but includes other types of stone. Category includes, but is not limited to, arches, balustrades, benches, brackets, bricks and blocks from walls, ceilings, and floors; columns, including capitals and bases; dentils; domes; door frames; false gables; friezes; lintels; merlons; mihrabs; minarets; mosaics; niches; pilasters; pillars, including capitals and bases; plinths; railings; ring stones; vaults; window screens (*jalis*). Elements may be plain, carved in relief, incised, inlaid, or inscribed in various languages and scripts; may be painted and/or gilded. Architectural elements may include relief sculptures, mosaics, and inlays that were part of a building, such as friezes, panels, or figures in the round. Includes architectural elements of Hellenistic (Greek) influence, such as Ionic and Corinthian styles, and/or depicting geometric, floral, or vegetal motifs, or figures and scenes from Hellenistic (Greek), Buddhist, Hindu, and Jain religious traditions. For example, Early Historic Period Gandharan architectural reliefs may include images of the Buddha, Bodhisattvas, human devotees, and scenes from the life of the Buddha. Approximate Date: 2600 B.C.–A.D. 1750.

(2) Non-Architectural Monuments—Primarily in limestone, marble, steatite schist, but includes other types of stone. Types include, but are not limited to: altars; bases; basins; cenotaphs; funerary headstones and monuments; fountains; libation platforms; *linga*(m); monoliths; niches; plaques; portable shrines; roundels; sarcophagi; slabs; stands; stelae; stelae bases; and *yoni.* Monuments may be plain, carved in relief, incised, inlaid, or inscribed in various languages and scripts; may be painted and/or gilded. Decorative elements may include geometric, floral, and/or vegetal motifs, as well as animal, mythological, and/or human figures, such as images from Hellenistic (Greek), Buddhist, Hindu, and Jain religious traditions. Includes rock edicts and pillars with incised inscriptions. Approximate Date: 800 B.C.–A.D. 1750.

(3) Large Statuary—Primarily in steatite schist but includes other types of stone. Statuary includes seated or standing human and divine figures, such as statues of the Buddha, Bodhisattvas, and devotees, as well as figures from Hindu religious traditions. Large statuary is primarily associated with the Early Historic Period Gandharan tradition. Statues may bear inscriptions in various languages and scripts. Approximate Date: 800 B.C.–A.D. 1200.

(4) Small Statuary—Primarily in agate, alabaster, chlorite, garnet, jade, jasper, limestone, marble, sandstone, and steatite schist, but includes other types of stone. Animal and human forms may be stylized or naturalistic. Includes game pieces. Small statuary is found throughout many periods from the Bronze Age onward; well-known styles date to the Indus and Early to Middle Historic Periods. Approximate Date: 3500 B.C.–A.D. 1750.

(a) Bronze Age Indus Period statuary is often made in alabaster, limestone, sandstone, or steatite. It includes human figures, such as bearded, seated males that may be schematic or more detailed and may have inlaid eyes, and female dancers, as well as animal figures such as bulls, rams, or composite mythological creatures that may be either schematic or naturalistic. Approximate Date: 3500–1800 B.C.

(b) Early Historic through Middle Historic period statuary made in alabaster, garnet, steatite schist, and other stones. Includes figures from Hellenistic (Greek), Buddhist, and Hindu religious traditions. Approximate Date: 800 B.C.–A.D. 1000.

(5) Vessels and Containers—Primarily in alabaster, chlorite, jade, rock crystal, and steatite, but includes other types of stone. Vessel types may be conventional shapes such as bowls, boxes, canisters, cups, cylindrical vessels, goblets, flasks, jars, jugs, lamps, platters, stands, and trays, and may also include caskets, cosmetic containers or palettes, inkpots, pen boxes, spittoons, reliquaries (and their contents), and incense burners. Includes vessel lids. Some reliquaries may take the shape of a Buddhist stupa. Surfaces may be plain, polished, and/or incised or carved in relief with geometric, floral, or vegetal decoration, elaborate figural scenes, and/or inscriptions in various languages. Vessels may be inlaid with stones or gilded. Includes round trays or cosmetic palettes carved in relief, often with Hellenistic (Greek) mythological or banquet scenes. Approximate Date: 6000 B.C.–A.D. 1750.

(6) Tools, Instruments, and Weights—Includes ground stone and flaked stone tools.

(a) Ground stone tools, instruments, and weights are mainly made from chert, diorite, gneiss, granite, jade, marble, limestone, quartz, sandstone, or steatite, but other types of stone are included. Types include adzes, anvils, axes, balls, celts, grinding stones, hammerstones, maces, mills, molds, mortars, palettes, pestles, querns, rods, rubbers, scepters, whetstones, and others. Also included are counters, dice, finials, fly whisk handles, game pieces, hilts, mirror frames and handles, spindle whorls, trays, and weights. Stone weights are found in various shapes, such as cubes, rectangular prisms, rings, spheres, and truncated spheres, and may be decorated with incisions or relief carving and/or inscribed in various languages and scripts. Mirror handles of the Early Historic Period may be carved in human and animal forms, and dagger and sword hilts of the Mughal period may be carved in zoomorphic shapes and inlaid with precious or semi-precious stones, glass and/or precious metals. Approximate Date: 8000 B.C.–A.D. 1750.

(b) Flaked stone tools are primarily made of chalcedony, chert or other cryptocrystalline silicates, flint, jasper, obsidian, or quartzite, but other types of stone are included. Types include axes, bifaces, blades, burins, borers, choppers, cleavers, cores, hammers, microliths, points, projectiles, scrapers, sickles, unifaces, and others. Approximate Date: 2,000,000 Years Before Present—600 B.C.

(7) Beads and Jewelry—Primarily in alabaster, agate, amethyst, carnelian, chalcedony, coral, cryptocrystalline silicates, emerald, garnet, jade, jasper, lapis lazuli, onyx, quartz, rock crystal, ruby, steatite, and turquoise, but also includes other types of stone. Steatite beads may be fired and glazed. Carnelian beads bleached (etched) in white with geometric designs are particularly representative of the Bronze Age Indus period. Beads were made in animal, biconical, conical, cylindrical, disc, dumbbell, eye, faceted, scaraboid, spherical, teardrop, and other shapes. May bear geometric designs, images, and/or inscriptions in various languages and scripts. Jewelry includes amulets, bracelets, pendants, rings, and other types. Approximate Date: 7000 B.C.–A.D. 1750.

(8) Stamps, Seals, and Gems—Primarily in agate, amethyst, carnelian, chalcedony, hematite, jasper, rock

crystal, steatite, but also includes other types of stone. Stamps, seals, and gems may have engravings that include animals, human figures, geometric, floral, or vegetal designs, and/or inscriptions in various languages and scripts. Includes cameos and intaglios. Well-known styles are from the Neolithic, Chalcolithic, Bronze Age, Iron Age, Early Historic Period, and Middle to Late Historic Periods. Approximate Date: 7000 B.C.–A.D. 1750.

(a) Chalcolithic and Bronze Age seals are usually square or rectangular stamp seals, but may also be circular, cylindrical, oval, or triangular, and may have a pierced knob handle. They may be made of steatite (usually fired and glazed) or other stones. Incised designs often feature inscriptions in the Indus script, either alone or together with animals such as bulls, elephants, and unicorns, as well as human, divine, and mythological figures, plants, and symbols. Designs may also be geometric. Approximate Date: 2800–1800 B.C.

(b) Stamps and intaglio seals of the Iron Age and Early Historic Period are usually made of stones such as agate, carnelian, chalcedony, garnet, hematite, jasper, lapis lazuli, onyx, quartz, and steatite. They are usually oval, rectangular, button-shaped or hemispherical. Stamps and seals may be incised, drilled, cut, or relief-carved with animals, human, divine, and/or mythological figures, and/or symbols of Hellenistic (Greek), Achaemenid/Persian, Buddhist, Zoroastrian, or Hindu traditions; may be carved with a portrait bust; may be perforated for suspension or set into a ring; may be inscribed in various languages and scripts. Approximate Date: 1500 B.C.–A.D. 712.

(c) Stamps and seals of the Middle and Late Historic Periods are usually made in carnelian, chalcedony, hematite, or other stones and are circular, oval, octagonal, teardrop-shaped, rectangular, or square. They are usually carved with inscriptions in Arabic or Persian script, sometimes with floral embellishments. Approximate Date: A.D. 712–1750.

(B) *Ceramic, Faience, and Fired Clay*

(1) Statuary—Includes small and large-scale statuary in ceramic, faience, and terracotta. May take the form of an animal, deity, human, hybrid animal/human or other mythological creature, cart frame or wheel, model mask, model boat, model house, or model stupa. May be associated with religious activity, games, or toys. May be painted or have traces of paint or pigment. Forms may be stylized or naturalized. Well-known styles date to the Chalcolithic, Bronze Age, Iron Age, Early Historic, and Middle Historic Periods. Approximate Date: 5500 B.C.–A.D. 1750.

(a) Chalcolithic and Bronze Age (Pre-Indus and Indus Period) male and female terracotta figurines are stylized with applied or incised eyes, hair, headdresses, or necklaces and tapered legs. Animal figurines in terracotta and faience may be stylized, with applied and incised details, or naturalistic and sometimes partly formed in a mold. Approximate Date: 5500–1800 B.C.

(b) Late Bronze Age (Post-Indus) and Iron Age terracotta human figurines may have pinched faces, incised details, and/or flat bases. Approximate Date: 1800–600 B.C.

(c) Early Historic Period terracotta figurines may be mold-made in Indo-Greek or local style or handmade with incised and applied details. They include female figurines (in the round and as plaques), horse-and-rider figurines, and animals. Approximate Date: 600 B.C.–A.D. 500.

(d) Early Historic Period large-scale terracotta statuary in the Gandharan tradition can be hand-formed or mold-made in the image of animals, humans, and mythological figures. May be painted, plastered, and/or inlaid with stones. Includes statues of the Buddha, Bodhisattvas, and devotees. Approximate Date: 1st–9th Centuries A.D.

(e) Middle Historic, Hindu Shahi Period terracotta figurines of male and female human figures and animals are handmade and schematic with pinched faces and applied and incised details. They can be slipped and painted. Approximate Date: 9th–10th Centuries A.D.

(2) Architectural Elements—Includes terracotta bricks, niches, panels, pipes, tiles, window screens (*jalis*), and other elements used as functional or decorative elements in buildings and mosaics. Bricks may be cut or molded to form decorative patterns on building exteriors. Mosaic designs include animals, humans, and geometric, floral, and/or vegetal motifs. Panels and tiles may be painted, plastered, or have traces of paint or plaster. Tiles may bear carved, incised, or impressed or molded decoration in the form of animals, humans, geometric, floral, and/or vegetal motifs. Glazed tiles and bricks are well-known from the Middle and Late Historic Periods, used to decorate civic and religious architecture. Tiles may be square or polygonal. They may have been molded, incised, and/or painted with animal, geometric, floral, and/or vegetal motifs, arabesque (intertwining) motifs, and or calligraphic writing in various scripts and languages before glazing. Glaze may be clear, monochrome, or polychrome. Polychrome glaze may be applied in the *cuerda seca* technique. Approximate Date: 3500 B.C.–A.D. 1750.

(3) Vessels—Includes utilitarian vessels, fine tableware, lamps, special-purpose vessels, and other ceramic objects of everyday use produced in many periods of Pakistan's history. Approximate Date: 6000 B.C.–A.D. 1750.

(a) Neolithic—Includes handmade earthenware vessels. Vessel types include bowls, jars, pots, and other forms. They may be made of coarse chaff- or sand-tempered clay, sometimes with red-slipped surface, often with basket or mat impressions. Approximate Date: 6000–5500 B.C.

(b) Chalcolithic—Includes handmade and wheel-made earthenware vessels. Vessel types include bowls, jars, flat dishes, pots, and other forms. Surface can be reddish-yellow, yellowish, buff, gray, brown, or red-brown, and burnished or red-slipped. Sometimes painted in black, brown, and/or red with simple geometric and animal motifs. Approximate Date: 5500–3500 B.C.

(c) Bronze Age (Pre-Indus, Indus, and Post-Indus Periods)—Includes handmade and wheel-made earthenware vessels. Vessel types include bowls, canisters, cooking pots, goblets, jars, lids, plates, pedestalled stands, perforated strainers, and other forms. Can also take the form of birdcages, feeder bottles, and mousetraps. Surface can be buff, greenish-gray, gray, red, red-buff, or white, sometimes with basket impressions or applied snake motifs. Sometimes slipped in black, gray, or red clay, occasionally combed to reveal the clay color beneath. Sometimes painted (monochrome, bichrome, or polychrome) in black, blue, brown, green, red, white, and yellow with simple or complex geometric motifs, animals such as birds, cattle, deer, dogs, gazelle, fish, and others, and/or vegetal motifs such as pipal leaves. Can be incised with characters in the Indus script. Approximate Date: 3500–1500 B.C.

(d) Iron Age—Includes handmade and wheel-made earthenware vessels. Vessel types include bottles, bowls, cooking pots, goblets, lids, jars, jugs, juglets, lids, plates, saucers, tubs, urns, and other forms. Vessel forms may have a pedestalled foot or stand, handles, and/or spouts. Surfaces can be red, gray, gray-black, brown, or brown-gray and may be slipped, grooved, and/or burnished. Painted decoration in monochrome or bichrome colors includes animal, human, plant, and/or

geometric motifs. ''Visage'' jars or urns characteristic of this period depict a human face through modeling and incision or perforation. Approximate Date: 1500–600 B.C.

(e) Early Historic Period—Includes handmade, mold-made, or wheel-made earthenware vessels. Vessel types include conventional shapes such as basins, beakers, bottles, bowls, cooking pots, cups, dishes (*thalis*), jars, pitchers, plates, storage vessels, trays, and vases (kraters), as well as other forms such as incense burners, lamps, rhyta (drinking horns), and stands. Vessel forms may have pedestal bases, handles, and/or spouts. Some vessels may have been formed into elaborate shapes using molds. ''Tulip bowls'' with a rounded base, flaring rim, and carinated or kinked body are typical of the early part of this period. Includes round trays or cosmetic palettes decorated in relief with Hellenistic (Greek) mythological scenes or banquet scenes. Vessels may have a brown, buff, gray, red, dark purplish-red, yellow, or black surface. Surface treatments may include slip, burnishing, polishing, incising, impressing (including grooving, rouletting, and stamping), appliqué, painting, and/or glazing. Stamp impressions include simple geometric motifs; leaves, lotuses, and rosettes; and elaborate scenes combining animal, human, geometric, floral, and/or vegetal motifs. Molded animal heads, human figures, or rosettes in clay may be applied to the exterior surface of a vessel or attached as a handle. Painted designs include geometric, floral, and vegetal motifs, as well as friezes of humans, animals, and plants. Some vessels may be covered with green, blue-green, brown, or yellow glaze. Vessels may be incised or painted with inscriptions in various languages and scripts. Approximate Date: 6th Century B.C.–9th Century A.D.

(f) Middle and Late Historic Periods—Includes handmade, molded, and wheel-made earthenware vessels, as well as porcelain. Vessel types include conventional shapes such as bowls, cooking pots, cups, ewers, flasks, jars, jugs, lamps, lids, pans, platters, trays, water vessels (lota), and other types such as hookah pots, incense burners, vessels with a pedestalled foot, kneading troughs, model stupas, pipes, and vessels in the shape of animals. Clay is often red or buff. Surface treatments may include slip, polishing, burnishing, incising, impressing, appliqué, painting, and/or glazing. Stamps and impressions include motifs such as circles, bars and dots, rosettes, eyes, and human faces. Molded designs can include inscriptions and/or geometric, floral, and/or vegetal motifs on unglazed or glazed vessels. Spouts and handles may be formed in the shape of animals. Painted decoration includes animal, geometric, floral, and vegetal motifs, as well as inscriptions in various languages and scripts, variously applied on a slipped surface, under a colorless glaze, or over a colored glaze. Designs may be scratched (*sgraffiato*) through the slip to reveal the clay color beneath before glazing. Glazes may be colorless, monochrome, or polychrome. Common colors include green, yellow, blue, black, brown, turquoise, and white. Imported types include celadon (green ware) and blue-and-white porcelain from China. Approximate Date: 9th Century A.D.–A.D. 1750.

(4) Beads, Jewelry, and Ornaments—Includes bangles, beads, bracelets, buttons, ear spools, inlays, and rings made of faience and terracotta. Beads include barrel, biconical, cylindrical, segmented, and other shapes. Faience may be colored with blue, blue-green, red, and white glaze. Approximate Date: 5500 B.C.–A.D. 1750.

(5) Tools and Instruments—Includes terracotta balls, buttons, ''cakes,'' coin molds, statuary molds, vessel molds, cones, cubes, dabbers, dice, discs, flutes, loom weights, net-sinkers, stamps, rattles, rubbers, spindle whorls, scoops, spoons, stoppers, tri-armed kiln setters, whistles, and other objects. Bronze Age ''cakes'' may be circular, square, or triangular, and whistles may take the shape of animals such as birds. May be incised or stamped with characters in various scripts. Approximate Date: 6000 B.C.–A.D. 1750.

(6) Stamps and Seals—Terracotta faience stamp seals were produced in the Bronze Age, Early Historic Period, and Middle Historic Hindu Shahi Period. Bronze Age Indus Period stamp seals can be square or circular in shape and compartmented with geometric and animal motifs and/or inscribed with Indus script. Approximate Date: 3500 B.C.–A.D. 1000.

(7) Tablets and Sealings—Terracotta and faience tablets and sealings of the Bronze Age Indus period may be cylindrical, rectangular, or prismatic and molded in relief with images of animals, humans, and other motifs, and/or inscriptions in Indus script. Approximate Date: 2600–1800 B.C.

(C) *Metal*—Includes copper, gold, silver, iron, lead, tin, electrum, and alloys such as bronze, brass, pewter, and steel. Metal objects were produced in many periods of Pakistan's history, beginning in the Chalcolithic Period. Approximate Date: 5500 B.C.–A.D. 1750.

(1) Containers and Vessels—Vessel types include conventional shapes such as basins, bottles, bowls, boxes, canisters, cauldrons, chalices, cups, dishes, ewers, flasks, jars, jugs, lamps, pans, plates, platters, pots, stands, utensils, and vases, but also include forms such as caskets, hookah pots, incense burners, reliquaries (and their contents), and spittoons. Some reliquaries may take the form of a Buddhist stupa. One end of some drinking vessels (*rhyta*) may take the form of an animal or mythical creature. They may include lids, spouts, and handles of vessels. Metal containers may have been decorated by chasing (embossing), engraving, gilding, inlaying, punching, and/or repoussé (relief hammering). Designs include, but are not limited to, inscriptions in various languages and scripts, arabesque (intertwining) motifs, geometric, floral, and vegetal motifs, animal motifs, and portrait busts or scenes of human figures, such as ceremonial, banquet, or hunting scenes. Some containers and vessels, such as reliquaries, may be inlaid with precious or semi-precious stones, as well as precious metals such as gold and silver. Approximate Date: 5500 B.C.–A.D. 1750.

(2) Jewelry and Personal Adornments—Types include, but are not limited to, amulets, amulet holders, bangles, beads, bracelets, belts, bracteates, brooches, buckles, buttons, charms, clasps, crowns, earrings, ear spools, hair ornaments, hairpins, headdress or hat ornaments, lockets, necklaces, pectoral ornaments, pendants, pins, rings, rosettes, and staffs. Includes metal ornaments, appliqués, and clasps once attached to textiles or leather objects. Includes also metal scrolls inscribed in various languages and scripts. May have been decorated by chasing (embossing), cloisonné, enameling, engraving, filigree, gilding, granulation, inlaying, and/or repoussé (relief hammering). Decoration may include animal, human, geometric, floral, or vegetal motifs. May include inlays of ivory, bone, animal teeth, enamel, other metals, precious stones, and/or semi-precious stones. Approximate Date: 5500 B.C.–A.D. 1750.

(3) Tools and Instruments—Types include, but are not limited to, axes, backscratchers, bells, blades, chisels, drills, goads, hinges, hooks, keys, knives, measuring rods, mirrors, mirror handles, nails, pickaxes, pins, rakes, rods, saws, scale weights, shears, sickles, spades, spoons, staffs, trowels, weights, and tools of craftspeople such as carpenters, masons, and metalsmiths.

Approximate Date: 5500 B.C.–A.D. 1750.

(4) Weapons and Armor—Includes body armor, such as chain mail, helmets, plate armor, scale armor, shin guards, shields, shield bosses, horse armor, and horse bits and bridle elements. Also includes launching weapons (arrowheads, spearheads, and javelin heads); hand-to-hand combat weapons (axes, swords, including sabers and scimitars, daggers, including khajars and katars, and maces); and sheaths. Some weapons may be highly decorative and incorporate inlays of other types of metal, precious stones, or semi-precious stones in the sheaths and hilts. Some weapons, hilts, and sheaths may be engraved or chased (embossed) with inscriptions in various languages and scripts, arabesque (intertwining), geometric, floral, and/or vegetal motifs, and/or human or animal scenes, such as hunting scenes. Approximate Date: 3500 B.C.–A.D. 1750.

(5) Coins—Ancient coins include gold, silver, copper, and copper alloy coins in a variety of denominations. Includes gold and silver ingots, which may be plain and/or inscribed. Some of the most well-known types are described below:

(a) Early coins in Pakistan include silver sigloi of the Achaemenid Empire. Gold staters and silver tetradrachms and drachms of Alexander the Great and Philip III Arrhidaeus are also found. Regionally minted Achaemenid-period coins include silver bent bars (*shatamana*) with punched symbols such as wheels or suns. Local Hellenistic (Greek)-period and Mauryan imperial punch-marked silver coins (*karshapana*) are covered with various symbols such as suns, crescents, six-arm designs, hills, peacocks, and others. Circular or square, die-struck cast copper alloy coins with relief symbols and/or animals on one or both sides also date to this period. Approximate Date: 6th–2nd Centuries B.C.

(b) Greco-Bactrian, Indo-Greek, Indo-Scythian, and Indo-Parthian coins include gold staters, silver tetradrachms, drachms, and obols, and copper alloy denominations. Copper alloy coins are often square. The bust of the king, the king on horseback, Greek and Hindu deities, the Buddha, elephants, bulls, and other animals are common designs. The name of the king is often written in Greek, Kharosthi or Brahmi script. Approximate Date: 2nd Century B.C.–1st Century A.D.

(c) Roman Imperial coins struck in silver and bronze are sometimes found in archaeological contexts in Pakistan. Approximate Date: 1st Century B.C.–4th Century A.D.

(d) Kushan coins include gold dinars, silver tetradrachms, and copper alloy denominations. Imagery includes the king as a portrait bust (''Augustus type''), standing figure with a fire altar, or equestrian figure; emblems (*tamgha*); and figures from Greek, Zoroastrian, Buddhist, and Hindu religious traditions. Inscriptions are written in Greek, Bactrian, and/or Brahmi scripts. Approximate Date: A.D. 30–350.

(e) Sasanian coins include gold dinars, silver drachms, obols (*dang*), and copper alloy denominations. Imagery includes the bust of the king wearing a large crown and Zoroastrian fire altars and deities. Inscriptions are usually written in Pahlavi, but gold dinars minted in Sindh with Brahmi inscriptions are included. Approximate Date: A.D. 240–651.

(f) Kushano-Sasanian or Kushanshah coins include gold dinars, silver tetradrachms, and copper alloy denominations. Some Kushano-Sasanian coins followed the Kushan style of imagery, while others resemble Sasanian coins. Inscriptions are written in Greek, Bactrian, Brahmi, or Pahlavi scripts. Approximate Date: A.D. 225–365.

(g) Gupta coins include gold dinars and silver and copper alloy denominations. Imagery includes the king in various postures and activities, the queen, Hindu deities, altars, and animals. Inscriptions are usually written in pseudo-Greek or Brahmi script. Approximate Date: A.D. 345–455.

(h) Coins of the Hephthalite, Kidarite, Alchon and Nezak Hun, Rai, Brahmin Chacha, and Turk Shahi Dynasties include silver and copper alloy denominations. Designs resemble Sasanian coins with a portrait bust of the ruler wearing a distinctive crown on the obverse and a fire altar or other Zoroastrian imagery on the reverse. Coins sometimes bear emblems (*tamghas*) and/or inscriptions in Bactrian, Pahlavi, Brahmi, or Nagari script. Designs are sometimes highly schematized. Approximate Date: 5th–9th Centuries A.D.

(i) Hindu Shahi silver coins often bear inscriptions in Nagari or Sharada script and depict a horseman and a bull, or an elephant and a lion. Approximate Date: A.D. 822–1026.

(j) The Umayyad and Abbasid Caliphates and the Ghaznavid and Ghurid Empires issued gold dinars, silver dirhams, and copper alloy *fulus* (singular *fals*) bearing Arabic inscriptions on both faces. Inscriptions are often enclosed in circles, squares, rings of dots, or an inscription band. Silver and copper alloy denominations of local governors, the Habbari Dynasty of Sindh, and the Emirate of Multan are similar, but some coins of Multan carry inscriptions in Nagari or Sharada. Some Ghaznavid coins carry bilingual inscriptions in Arabic and Sharada scripts, and some bear images of a bull and horseman. Some Ghurid coins bear inscriptions in Devanagari and/or stylized images of a flower, bull, horseman, and/or goddess. Approximate Date: A.D. 712–1206.

(k) The Delhi Sultanate issued gold *tankas,* silver *tankas* and *jitals,* and copper alloy denominations bearing Arabic inscriptions, either enclosed in a circle, scalloped circle, octofoil, flower, square, or inscription band, or covering the full face of the coins. Some bear inscriptions in Devanagari and/or stylized images of a bull, horseman, lion, or goddess. Some coins are square. Approximate Date: A.D. 1206–1526.

(l) The Mughal Empire issued coins such as gold *mohurs;* silver *shahrukhis,* rupees, and tankas; copper and copper alloy dams, and other denominations. Coins bear Arabic inscriptions enclosed in a circle, ring of dots, square, or inscription band, or covering the entire face. Some coins are square. Some coins bear an image of the seated emperor, a portrait bust of the emperor, a sun, and/or Zodiac symbols. Approximate Date: A.D. 1526–1749.

(6) Statuary, Ornaments, and other Decorated Objects—Primarily in copper, gold, silver, or alloys such as bronze and brass. Includes free-standing and supported statuary; relief or incised plaques or roundels; finials; votive ornaments; stands; and other ornaments. Statuary may be fashioned as humans, animals, deities, or mythological figures; miniature chariots; wheeled carts; or other objects. Statuary may take naturalized or stylized forms. Decorative techniques for statuary, ornaments, and other decorated objects include chasing (embossing), gilding, engraving, repoussé (relief hammering), and/or inlaying with other materials. Decorative elements may include humans, deities, animals, mythological figures, scenes of activity, floral, geometric, and/or vegetal motifs, and/or inscriptions in various languages and scripts. Imagery representative of the Early Historic and Middle Historic Periods includes figures from Hellenistic (Greek), Buddhist, and Hindu religious traditions. Approximate Date: 3500 B.C.–A.D. 1750.

(7) Stamps, Seals, and Tablets—Primarily cast in copper and alloys such as bronze and brass; also includes stamps and seals in gold or silver. Types include amulets, flat tablets, rings, small devices with engraving on one side, and others. Stamps and seals may have

engravings that include animals, humans, deities, mythological figures, geometric, floral, and vegetal motifs, symbols, and/or inscriptions in various languages and scripts. May be inlaid with other types of material. Approximate Date: 3500 B.C.–A.D. 1750.

(D) *Plaster, Stucco, and Unfired Clay*—Includes ceiling decoration or tracery, columns, corbels, cornices, large- and small-scale figures of animals, humans, and deities, friezes, medallions, mihrabs, ornaments, niches, panels, plaques, reliefs, roundels, stupas, vaults, window screens, and other architectural and non-architectural decoration or sculpture. May be painted or bear traces of paint; gilded; inlaid with stones or other materials; and/or inscribed in various languages and scripts. Stucco panels may depict elaborate scenes of animals and human activity (such as hunting or elite activity) and/or arabesque (intertwining), geometric, floral, and/or vegetal patterns. Stucco panels may have been made with molds. Stucco sculpture and decorated objects of the Early Historic Period may resemble Hellenistic (Greek) styles and figures; they may depict individuals such as the Buddha, Bodhisattvas, or devotees. Unfired clay bullae and roundels with stamped or rolled impressions used as sealing material are included. Approximate Date: 5500 B.C.–A.D. 1750.

(E) *Paintings*—Includes paintings, frescoes, and fragments on natural stones and cave walls, building walls and ceilings, and portable media. Rock paintings of the Paleolithic through Bronze Age are usually executed in red or black pigments and depict stylized animals and humans or symbols. Patterns in red, black, and white pigments are typical for wall paintings of the Neolithic period. Rock and wall frescoes of the Early Historic Period depict humans, animals, and geometric symbols, sometimes with imagery from Buddhist and Hindu religious traditions, in various colors and styles. Wall and ceiling frescoes with polychrome arabesque, floral, vegetal, and geometric patterns and inscriptions are typical of the Mughal Period. Mughal Period paintings also include miniature portraits set in rings or pendants and larger paintings on cotton. Approximate Date: 30,000 B.C.–A.D. 1750.

(F) *Ivory and Bone*

(1) Non-Architectural Relief Panels and Plaques—Decorated and engraved panels and plaques featuring low-and high-relief carvings. May include imagery of humans, deities, animals, mythological creatures, and human activity, as well as floral, geometric, and/or vegetal motifs. May be gilded and/or painted or bear traces of paint or pigment. Approximate Date: 1st Century A.D.–A.D. 1750.

(2) Statuary—Includes carved animal, human, and deity figures. Geometric, floral, and/or vegetal decorative elements may be part of the carved design. Approximate Date: 1st Century A.D.–A.D. 1750.

(3) Containers, Tools, Handles, and other Instruments—Includes awls, boxes, buckles, buttons, caskets, combs, flasks, game dice, game pieces, dagger or sword handles or hilts, mirrors and mirror handles, points, polishers, reliquaries, rods, rulers, spatulas, spindles, stoppers, and other personal objects made of ivory and bone. May be incised and/or painted with decorative motifs, inlaid with other materials, carved in relief, carved in zoomorphic shapes, and/or inscribed in various languages and scripts. Approximate Date: 45,000 B.C.–A.D. 1750.

(4) Furniture and Furniture Elements—Includes bone or ivory brackets, handles, finials, and elements of chairs, couches, beds, footstools, chests, trunks and other types of furniture such as arms, legs, feet, inlays, and panels. Approximate Date: 1st Century A.D.–A.D. 1750.

(5) Jewelry and Ornaments—Types include, but are not limited to, beads, pendants, hairpins, pins, and rings. Approximate Date: 5500 B.C.–A.D. 1750.

(6) Stamps and Seals—Bone and ivory seals include button-shaped and square stamps, among other shapes. May be engraved with animals, humans, deities, geometric, floral, and/or vegetal designs, symbols, and/or inscriptions in various languages and scripts, including the Indus script. Approximate Date: 4000 B.C.–A.D. 712.

(G) *Glass*

(1) Architectural Elements—Includes glass pieces or tiles arranged in mosaic fashion to create geometric, floral, and/or vegetal designs on architectural surfaces or in windows. Glass may be mirrored or stained. Approximate Date: 1st Century A.D.–A.D. 1750.

(2) Beads and Jewelry—Includes beads in the form of animals, cylinders, cones, discs, spheres, or other shapes, as well as bangles. Decoration may include bevels, incisions, and/or raised decoration. Includes glass inlay used in other types of jewelry and decorated items. Includes stamp seals or gems incised with decorative and figural designs. Approximate Date: 1100 B.C.–A.D. 1750.

(3) Vessels—Vessel types include conventional shapes such as beakers, bottles, bowls, cups, dishes, flasks, goblets, jars, mugs, plates, and vases, and other forms such as cosmetic containers, lamps, medicine droppers, and animal-shaped vessels. Some vessels may have been formed in molds or using mosaic techniques. May be monochrome or polychrome. Some polychrome glass vessels may have been painted with arabesque (intertwining), floral and/or vegetal designs or bear traces of paint. Approximate Date: 1st Century A.D.–A.D. 1750.

(4) Ornaments—Includes glass medallions. May have molded decorations including, but not limited to, animals, humans, geometric, floral, and vegetal motifs. Typically associated with the Ghaznavid and Ghurid periods. Approximate Date: A.D. 1000–1200.

(H) *Leather, Birch Bark, Vellum, Parchment, and Paper*

(1) Books and Manuscripts—Includes scrolls, sheets, and bound volumes. Texts may be written in ink on birch bark, vellum, parchment, or paper, and may be gathered into leather or wooden bindings, albums, or folios. Includes secular and religious texts. Texts of the Early Historic Period written on birchbark, vellum, and parchment include sacred texts of Buddhism and other religions of ancient Pakistan, as well as texts on secular topics such as mathematics, and are written in various languages and scripts, such as Brahmi, Gandhari, Kharosthi, and Sharada. Books and manuscripts of the Middle and Late Historic Periods were written primarily on paper in various languages in scripts such as Arabic, Persian, Devanagari, and Sharada. Topics of this period include, but are not limited to, religion, religious epics, science, mathematics, medicine, literature, poetry, history, and biography. Books and manuscripts of this period may be embellished or decorated with monochrome or polychrome paintings or illuminations of arabesque (intertwining), geometric, floral, or vegetal motifs; images of animals, plants, and humans, including individual portraits; landscapes; and/or scenes of human activities, such as courtly gatherings and ceremonies, hunting, falconry, battles, and historical, mythological, or legendary events. May be in miniature form with decorated borders. Paper may be marbleized and/or embellished with gold. Approximate Date: 1st Century A.D.–A.D. 1750.

(2) Items of Personal Adornment—Primarily in leather, including bracelets and other types of jewelry, belts, necklaces, sandals, and shoes. May be embroidered or embellished with other

materials. Leather goods may have also been used in conjunction with textiles. Approximate Date: 7000 B.C.–1750 A.D.

(I) *Textiles*—Includes silk, linen, cotton, hemp, wool, and other woven materials used in basketry and other household goods. Includes clothing, shoes, jewelry, and items of personal adornment; sheaths; burial shrouds; tent coverings, tent hangings, and other domestic textiles; carpets; baskets; and others. Textiles may be plain, or patterns may have been woven into the body of the textile. Other decorative techniques include embroidery, application of gold leaf, or painting with various motifs, such as animals, geometric, floral, and vegetal motifs, and other designs. Gold or silver threads may be woven into the textile. Approximate Date: 7000 B.C.–A.D. 1750.

(J) *Wood, Shell, and other Organic Material*—Wooden objects include architectural elements, such as arches, balconies, bases, benches, capitals, columns, doors, door frames, friezes, lintels, mihrabs, minbars, jambs, panels, posts, screens, shutters, window frames and fittings, and window screens, or pieces of any of these objects; boxes; coffins; finials; furniture; jewelry and other items of personal adornment; musical instruments; statuary and figurines; stamps and seals with engraved designs and/or inscriptions in various languages and scripts; vessels and containers; weapons such as bows; and other objects. Jewelry and ornaments made of shell, mother-of-pearl, and pearl include bangles, beads, bracelets, cones, inlays, necklaces, pendants, rings, studs, and other types. Vessels made of shell or set with mother-of-pearl panels include ewers, ladles, libation vessels, plates, and spoons. Wooden, shell, mother-of-pearl, and pearl objects may be carved, incised, inlaid with other materials, lacquered, and/or painted. Approximate Date: 7000 B.C.–1750 A.D.

(K) *Human Remains*—Human remains and fragments of human remains, including skeletal remains, soft tissue, and ash from the human body that may be preserved in burials, reliquaries, and other contexts.

(II) Ethnological Material

Ethnological material in the Designated List includes manuscripts and architectural materials from civic and religious buildings associated with Pakistan's diverse history from A.D. 800 through 1849.

(A) *Architectural Materials*—Architectural materials include non-industrial and/or handmade elements used to decorate civic and religious architecture. They may be made of stone, ceramic or terracotta, plaster and stucco, glass, and/or wood, and painted media.

(1) Stone—Primarily in limestone, marble, sandstone, and steatite schist. Includes arches; balustrades; benches; brackets; bricks and blocks from walls, ceilings, and floors; columns, including capitals and bases; corbels; cornices; dentils; domes; door frames; false gables; friezes; lintels; merlons; mihrabs; minarets; mosaics; niches; panels; pilasters; pillars, including capitals and bases; plinths; railings; ringstones; vaults; window screens (*jali*s); and others. May be plain, carved in relief, incised, inlaid, or inscribed in various languages and scripts. May be painted and/or gilded. May include relief sculptures, mosaics, and inlays that were part of a civic or religious building, such as friezes, panels, or figures in the round. Imagery may be civic or religious. Mosaic designs include animals, humans, and geometric, floral, and/or vegetal motifs. Approximate Date: A.D. 800–1849.

(2) Ceramic and Fired Clay—Includes terracotta (fired clay) bricks, mosaics, niches, panels, pipes, tiles, window screens (*jali*s), and other elements used as decorative elements in civic and religious buildings. Bricks may be cut or molded to form decorative patterns on building exteriors. Mosaic designs include animals, humans, and geometric, floral, and/or vegetal motifs. Panels and tiles may be painted, plastered, or have traces of paint or plaster. Tiles may be square or polygonal and may be carved, incised, impressed, or molded with decorations in the form of animals, humans, geometric, arabesque (intertwining), floral, and/or vegetal motifs, and/or calligraphic writing in various scripts and languages, and/or then glazed. Glaze may be clear, monochrome, and/or polychrome. Polychrome glaze may be applied in the *cuerda seca* technique. Approximate Date: A.D. 800–1849.

(3) Plaster and Stucco—Includes ceiling decoration or tracery, columns, corbels, cornices, friezes, medallions, mihrabs, niches, panels, plaques, reliefs, roundels, vaults, window screens, and other types. May be painted or bear traces of paint; gilded; inlaid with stones or other materials; and/or inscribed in various languages and scripts. Designs may include arabesque (intertwining), geometric, floral, and/or vegetal patterns. May have been made using molds. Approximate Date: A.D. 800–1849.

(4) Paintings and Frescos—Includes paintings and frescoes on civic and religious building walls and ceilings, and fragments thereof. Frescoes with polychrome arabesque (intertwining), floral, vegetal, and/or geometric patterns and inscriptions are typical of the Mughal Period. Jain and Hindu temples and Sikh *gurdwaras* are sometimes adorned with frescoes depicting human and animal figures and scenes, as well as floral, vegetal, and geometric motifs. Approximate Date: A.D. 800–1849.

(5) Glass—Includes glass pieces or tiles arranged in mosaic fashion to create geometric, floral, and/or vegetal designs on architectural surfaces or in windows. Glass may be mirrored or stained. Often found in mosques and Sikh gurdwaras. Approximate Date: A.D. 1000–1849.

(6) Wood—Includes hand-carved arches, balconies, bases, benches, capitals, columns, doors, door frames, friezes, lintels, mihrabs, minbars, jambs, panels, posts, screens, shutters, window frames and fittings, and window screens, or parts thereof, used as structural elements in and/or to decorate civic or religious architecture. These architectural elements may have been reused for new purposes, such as a wood panel used as a table, or a door jamb used as a bench. May be carved, incised, inlaid with other materials, and/or painted. Approximate Date: A.D. 800–1849.

(B) *Manuscripts*—Manuscripts, portions of manuscripts, and works on paper include non-industrial, handmade, handwritten, hand-illustrated and/or illuminated scrolls, sheets, and bound volumes. They may be made of various media, from writing, illustrations, and/or illuminations on parchment, vellum, birchbark, cotton, or paper to binding in leather or wood. Texts may be written in various languages and scripts, such as Arabic, Balochi, Brahmi, Gandhari, Kharoshti, Nagari, Pashto, Persian, Sharada, Sindhi, and/or Urdu. They may include sacred texts of Buddhism and/or other religious traditions. Other topics include, but are not limited to, astronomy, botany, history, literature, mathematics, medicine, poetry, religion, and/or sciences. May be embellished or decorated with monochrome, bichrome, or polychrome handmade illustrations and/or illuminations. These may include arabesque (intertwining), geometric, floral, or vegetal motifs; images of animals, plants, and humans, including portraiture; landscapes; and/or scenes of human activities, such as courtly gatherings and ceremonies, hunting, falconry, battles, and historical, mythological, or legendary events. May be in miniature form with decorated borders. Approximate Date: A.D. 800–1849.

References

Adle, C., I. Habib, and K.M. Baipakov, eds. 2003. *History of Civilizations in Central Asia. Volume V. Development in Contrast: From the Sixteenth to the Mid-Nineteenth Century.* Paris: UNESCO Publishing.

Ashmolean Museum. Collection Online. *https://collections.ashmolean.org/.*

Asimov, M.S., and C.E. Bosworth, eds. 1998. *History of Civilizations in Central Asia. Volume IV. The Age of Achievement: A.D. 750 to the End of the Fifteenth Century. Part One: The Historical, Social, and Economic Setting.* Paris: UNESCO Publishing.

Behrendt, K.A. 2007. *The Art of Gandhara in the Metropolitan Museum of Art.* New York: Metropolitan Museum of Art.

Bosworth, C.E., and M.S. Asimov, eds. 2000. *History of Civilizations in Central Asia. Volume IV. The Age of Achievement: A.D. 750 to the End of the Fifteenth Century. Part Two: The Achievements.* Paris: UNESCO Publishing.

British Museum. Explore the Collection. *https://www.britishmuseum.org/collection.*

Coningham, R., and R. Young. 2015. *The Archaeology of South Asia: From the Indus to Asoka, c. 6500 BCE–200 CE.* Cambridge: Cambridge University Press.

Dani, A.H., and V.M. Masson, eds. 1992. *History of Civilizations in Central Asia. Volume I. The Dawn of Civilization: Earliest Times to 700 B.C.* Paris: UNESCO Publishing.

Harmatta, J., B.N. Puri, and G.F. Etemadi, eds. 1994. *History of Civilizations in Central Asia. Volume II. The Development of Sedentary and Nomadic Civilizations: 700 B.C. to A.D. 250.* Paris: UNESCO Publishing.

Jongeward, D. 2019. *Buddhist Art of Gandhara: In the Ashmolean Museum.* Oxford: Ashmolean Museum.

Kenoyer, J.M. 1998. *Ancient Cities of the Indus Valley.* Karachi: Oxford University Press.

Lahore Museum. n.d. *Lahore Museum: A Gallery of Our Culture. A Guide.* Lahore: Lahore Museum Publications.

Litvinsky, B.A., Z. Guang-da, and R.S. Samghabadi, eds. 1996. *History of Civilizations in Central Asia. Volume III. The Crossroads of Civilizations: A.D. 250 to 750.* Paris: UNESCO Publishing.

Long, R.D., ed. 2015. *A History of Pakistan.* Karachi: Oxford University Press.

Mairs, R., ed. 2021. *The Graeco-Bactrian and Indo-Greek World.* Abingdon: Routledge.

Metropolitan Museum of Art. 1987. *The Islamic World.* New York: Metropolitan Museum of Art. Metropolitan Museum of Art. The Met Collection. *https://www.metmuseum.org/art/the-collection.*

Mills, M.A., Claus, P.J., and Diamond, S. 2003. *South Asian Folklore: An Encyclopedia Afghanistan, Bangladesh, India, Nepal, Pakistan, Sri Lanka.* New York: Routledge. University of Pennsylvania Museum of Archaeology and Anthropology. Online Collections. *https://www.penn.museum/collections/.*

Victoria and Albert Museum. The Arts of the Mughal Empire. *https://www.vam.ac.uk/articles/the-arts-of-the-mughal-empire.*

Victoria and Albert Museum. Explore the Collections. *https://www.vam.ac.uk/collections?type=featured.*

Inapplicability of Notice and Delayed Effective Date

This amendment involves a foreign affairs function of the United States and is, therefore, being made without notice or public procedure (5 U.S.C. 553(a)(1)). For the same reason, a delayed effective date is not required under 5 U.S.C. 553(d)(3).

Executive Orders 12866 and 13563

Executive Orders 12866 (as amended by Executive Order 14094) 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 (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. CBP has determined that this document is not a regulation or rule subject to the provisions of Executive Orders 12866 and 13563 because it pertains to a foreign affairs function of the United States, as described above, and therefore is specifically exempted by section 3(d)(2) of Executive Order 12866 and, by extension, Executive Order 13563.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of a proposed rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions) when the agency is required to publish a general notice of proposed rulemaking for a rule. Since a general notice of proposed rulemaking is not necessary for this rule, CBP is not required to prepare a regulatory flexibility analysis for this rule.

Signing Authority

This regulation is being issued in accordance with 19 CFR 0.1(a)(1) pertaining to the Secretary of the Treasury's authority (or that of the Secretary's delegate) to approve regulations related to customs revenue functions.

Troy A. Miller, the Senior Official Performing the Duties of the Commissioner, having reviewed and approved this document, has delegated the authority to electronically sign this document to the Director (or Acting Director, if applicable) of the Regulations and Disclosure Law Division for CBP, for purposes of publication in the **Federal Register**.

List of Subjects in 19 CFR Part 12

Cultural property, Customs duties and inspection, Imports, Prohibited merchandise, Reporting and recordkeeping requirements.

Amendment to CBP Regulations

For the reasons set forth above, part 12 of title 19 of the Code of Federal Regulations (19 CFR part 12), is amended as set forth below:

PART 12—SPECIAL CLASSES OF MERCHANDISE

■ 1. The general authority citation for part 12 and the specific authority citation for § 12.104g continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

* * * * *

Sections 12.104 through 12.104i also issued under 19 U.S.C. 2612;

* * * * *

■ 2. In § 12.104g, the table in paragraph (a) is amended by adding Pakistan to the list in alphabetical order to read as follows:

§ 12.104g Specific items or categories designated by agreements or emergency actions.

(a) * * *

State party	Cultural property	Decision No.
* * * * * * *		
Pakistan	Archaeological material of Pakistan ranging from the Lower Paleolithic Period (approximately 2,000,000 Years Before Present) through A.D. 1750, and ethnological material of Pakistan ranging in date from approximately A.D. 800 through 1849.	CBP Dec. 24–09.
* * * * * * *		

* * * * *

Emily K. Rick,

Acting Director, Regulations & Disclosure Law Division, Regulations & Rulings, Office of Trade, U.S. Customs and Border Protection.

Aviva R. Aron-Dine,

Acting Assistant Secretary of the Treasury for Tax Policy.

[FR Doc. 2024–07244 Filed 4–9–24; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2024–0218]

Special Local Regulations; Blue Water Resort and Casino Spring Classic; Parker, Arizona

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

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the Blue Water Resort and Casino Spring Classic special local regulations on the waters of Parker, AZ from April 13, 2024, to April 14, 2024. These special local regulations are necessary to provide for the safety of the participants, crew, spectators, sponsor vessels, and general users of the waterway. During the enforcement period, persons and vessels are prohibited from anchoring, blocking, loitering, or impeding within this regulated area unless authorized by the Captain of the Port, or his designated representative.

DATES: The regulations in 33 CFR 100.1102 will be enforced from April 13, 2024, to April 14, 2024, from 6 a.m. through 6 p.m. daily for the locations described in Table 1 to § 100.1102, Item 6 of that section.

FOR FURTHER INFORMATION CONTACT: If you have questions about this publication of enforcement, call or email Lieutenant Shelley Turner, Waterways Management, U.S. Coast Guard Sector San Diego, CA; telephone (619) 278–7261, email *MarineEventsSD@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local regulations in 33 CFR 100.1102 for the Spring Classic in Parker, AZ for the locations described in Table 1 to § 100.1102, Item 6 of that section, April 13, 2024, to April 14, 2024, from 6 a.m. until 6 p.m. daily. The location includes the waters of Parker, AZ. This enforcement action is being taken to provide for the safety of life on navigable waterways during the event. The Coast Guard's regulation for recurring marine events on the Colorado River, between Davis Dam (Bullhead City, Arizona) and Headgate Dam (Parker, Arizona) identifies the regulated entities and area for this event. Under the provisions of 33 CFR 100.1102, persons and vessels are prohibited from anchoring, blocking, loitering, or impeding within this regulated area, unless authorized by the Captain of the Port San Diego, or his designated representative. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

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

If the Captain of the Port Sector San Diego or his designated representative determines that the regulated area need not be enforced for the full duration stated on this document, he or she may use a Broadcast Notice to Mariners or other communications coordinated with the event sponsor to grant general permission to enter the regulated area.

James W. Spitler,

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

[FR Doc. 2024–07536 Filed 4–9–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2024–0219]

Special Local Regulations; Desert Storm Poker Run Shootout, Lake Havasu, AZ

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

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the Desert Storm Poker Run Shootout special local regulations on the waters of Lake Havasu, Arizona on April 26, 2024, through April 28, 2024. These special local regulations are necessary to provide for the safety of the participants, crew, spectators, sponsor vessels, and general users of the waterway. During the enforcement period, persons and vessels are prohibited from anchoring, blocking, loitering, or impeding within this regulated area unless authorized by the Captain of the Port, or his designated representative.

DATES: The regulations in 33 CFR 100.1102 will be enforced on April 26, 2024, from 11 a.m. to 5 p.m., and April 27, 2024, for the locations described in Item No. 4 in Table 1 to § 100.1102. In case of inclement weather on April 27, 2024, Coast Guard will also enforce the regulations in 33 CFR 100.1102 from 10 a.m. to 3 p.m. on April 28, 2024, for the location in Item No. 4 in Table 1 to § 100.1102.

FOR FURTHER INFORMATION CONTACT: If you have questions about this publication of enforcement, call or email Lieutenant Shelley Turner, Waterways Management, U.S. Coast Guard Sector San Diego, CA; telephone (619) 278–7261, email *MarineEventsSD@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local regulations in 33 CFR 100.1102 for the Desert Storm Poker Run Shootout in Lake Havasu, AZ, for the locations

described in Table 1 to § 100.1102, Item No. 4 from 11 a.m. until 5 p.m. on April 26, 2024, and 10 a.m. to 3 p.m. on April 27, 2024. In case of inclement weather, we will also enforce the special local regulations on Sunday, April 28, 2024 from 10 a.m. to 3 p.m. This enforcement action is being taken to provide for the safety of life on navigable waterways during the event. The Coast Guard's regulation for recurring marine events in the San Diego Captain of the Port Zone identifies the regulated entities and area for this event. Under the provisions of § 100.1102, persons and vessels are prohibited from anchoring, blocking, loitering, or impeding within this regulated area, unless authorized by the Captain of the Port, or his designated representative. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

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

If the Captain of the Port Sector San Diego or his designated representative determines that the regulated area need not be enforced for the full duration stated on this document, he or she may use a Broadcast Notice to Mariners or other communications coordinated with the event sponsor to grant general permission to enter the regulated area.

J.W. Spitler,

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

[FR Doc. 2024–07537 Filed 4–9–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2024–0250]

RIN 1625–AA00

Fixed and Moving Safety Zone; Vicinity of the M/V HAPPY DIAMOND, Houston Ship Channel and Seabrook, TX

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

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing two temporary safety zones, a moving safety zone and a fixed safety zone, around the M/V HAPPY DIAMOND in the navigable waters of the Houston Ship Channel and its vicinity. The temporary safety zones are necessary to protect persons, property, and the marine environment from potential hazards associated with the transfer of large gantry cranes. Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zones unless specifically authorized by the Captain of the Port Houston-Galveston or a designated representative.

DATES: This rule is effective without actual notice from April 10, 2024 through 4 p.m. on April 17, 2024. For the purposes of enforcement, actual notice will be used from 5 a.m. on April 4, 2024, until April 10, 2024.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2024–0250 in the search box, and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email MSTC Anthony Booth, Sector Houston-Galveston Waterway Management Division, Coast Guard; telephone 713–398–5823, email *houstonwwm@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

COTP Captain of the Port
CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule under authority in 5 U.S.C. 553(b)(B). This statutory provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency, for good cause, finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' The Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. The Coast Guard received all relevant information for the transfer of the large gantry cranes and the need for the safety zone on March 18, 2024. Insufficient time remains to publish an NPRM and receive and consider public comments because the rulemaking process would not be completed before the events commencement on April 4, 2024. Proceeding with the NPRM process would delay the establishment of the safety zones beyond the event date, compromising the safety of the M/V HAPPY DIAMOND, the crew, and other vessels navigating the surrounding waterways. Therefore, it is impracticable to publish an NPRM because we must establish the temporary safety zone by April 4, 2024.

Also, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action is needed to respond to the potential safety hazards associated with the transfer of large gantry cranes beginning on April 4, 2024.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Houston-Galveston (COTP) has determined that potential hazards associated with the transfer of large gantry cranes starting April 4, 2024, will be a safety concern for anyone within a 100-yard radius while the M/V HAPPY DIAMOND is in transit and for anyone within 25-yard radius while the M/V HAPPY DIAMOND is moored. This rule is needed to protect persons, property, and the marine environment within the navigable waters of the safety zones while the M/V HAPPY DIAMOND transits to and unloads in Seabrook, Texas.

IV. Discussion of the Rule

This rule establishes two temporary safety zones from 5 a.m. on April 4, 2024, through 4 p.m. on April 17, 2024. The temporary safety zones include a moving safety zone, covering all navigable waters within 100 yards of the M/V HAPPY DIAMOND, and a fixed safety zone, covering all navigable waters within 25 yards of the vessel. The duration of the zones is intended to ensure the safety of the public and navigable waters in the specified areas during the transit of the large gantry cranes in the Houston Ship Channel and while the vessel is moored. No vessel or person will be permitted to enter, transit through, anchor in, or remain within the safety zones without obtaining permission from the COTP or a designated representative.

Moving Safety Zone: This area includes all waters within 100 yards of the M/V HAPPY DIAMOND as the vessel transits from the Gulf of Mexico off the coast of Galveston and through the Houston Ship Channel. The following coordinates are the

approximate start position 29°19′01.21″ N, 094°38′38.1″ W in the Gulf of Mexico off the coast of Galveston.

Fixed Safety Zone: This area includes all waters within 25 yards of the M/V HAPPY DIAMOND once the vessel is moored at Bayport Terminal in Seabrook, Texas.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the safety zones size, location, duration, and time-of-day. The safety zones will be enforced for 15 days during the transfer of large gantry cranes in the Houston Ship Channel. Although the rule prohibits persons and vessels from entering, transiting through, anchoring in, or remaining within the regulated area without authorization from the COTP or a designated representative, they may operate in the surrounding areas during the enforcement period. The Coast Guard will provide advance notification of the safety zones to the local maritime community by Local Notice to Mariners and/or Broadcast Notice to Mariners, and the rule would allow vessels to seek permission to enter the zones.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone that will prohibit persons and vessels from entering, transiting through, anchoring in, or remaining within the regulated area during the transfer of large gantry cranes in the Houston Ship Channel. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T08–0250 to read as follows:

§ 165.T08–0250 Fixed and Moving Safety Zone; Around the M/V HAPPY DIAMOND, Houston Ship Channel and Seabrook, TX.

(a) *Regulated Area.* The following areas are temporary safety zones:

(1) *Moving Safety Zone:* All waters within a 100-yard radius of the M/V HAPPY DIAMOND, as the vessel transits from the approximate coordinates 29°19′01.21″ N, 094°38′38.1″ W, off the coast of Galveston, and proceeds through the Houston Ship Channel to the assigned docking stations.

(2) *Fixed Safety Zone:* All waters within a 25-yard radius of the M/V HAPPY DIAMOND, while moored, at the Bayport Terminal in Seabrook, Texas, will be in effect for the event's duration.

(b) *Definition.* The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the COTP Houston-Galveston in the enforcement of the regulated areas.

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

(2) Designated representatives may control vessel traffic throughout the enforcement area as determined by the prevailing conditions.

(3) Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the regulated areas by contacting the COTP by telephone at 866–539–8114, or the COTP's designated representative via VHF radio on channel 16. If authorization is granted by the COTP or the COTP's designated representative, all persons and vessels receiving such authorization must comply with the instructions of the COTP or the COTP's designated representative.

(d) *Enforcement Period.* This rule will be subject to enforcement from 5 a.m. on April 4, 2024, through 4 p.m. on April 17, 2024.

Dated: April 3, 2024.

Keith M. Donohue,

Captain, U.S. Coast Guard, Captain of the Port Sector Houston-Galveston.

[FR Doc. 2024–07571 Filed 4–9–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900–AR97

Loan Guaranty: Servicer Regulation Changes

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is renaming and clarifying certain loss-mitigation terms used in VA's regulations. VA is making these changes to align the names and definitions with their general use in the housing finance industry. VA believes that these revisions will help avoid confusion and enable servicers and veterans to address loan defaults more quickly and effectively.

DATES: This rule is effective May 10, 2024.

FOR FURTHER INFORMATION CONTACT: Andrew Trevayne, Assistant Director for Loan and Property Management, and Stephanie Li, Assistant Director for Regulations, Legislation, Engagement, and Training, Loan Guaranty Service (26), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 632–8862. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION: On July 20, 2023, VA published a proposed rule in the **Federal Register** (88 FR 46720) to rename and clarify certain loss-mitigation terms used in VA's regulations to better align such name and terms with their general use in the housing finance industry. The public comment period for the proposed rule closed on September 18, 2023. VA is adopting as final the proposed regulatory changes with the grammatical edit as noted below.

VA received one comment that did not address the subject of the rulemaking but instead requested VA ban realtors from transactions involving veterans or their survivors. VA finds this comment to be outside the scope of this rulemaking and, therefore, will make no changes to the regulatory text based on this comment.

In the proposed rule, VA discussed that the Agency would remove the references to ''written'' and ''executed'' in regard to a repayment plan and a special forbearance agreement and replace them with a requirement for the repayment plan or special forbearance agreement be documented 88 FR 46720, 46721. However, VA inadvertently kept the term ''executed'' in the proposed amendment to the definition of ''special forbearance.'' Therefore, VA is correcting the error in this final rule by replacing the current rule's phrase, ''a written agreement executed'' with ''a documented agreement,'' as proposed, and removing the term ''executed.'' The corrected definition of special forbearance reads in this final rule, ''a documented agreement by and between the holder and the borrower.'' The deletion is grammatical only, not substantive, and reflects VA's intent as explained in the proposal.

The purpose of this paragraph is to clarify the Agency's intent with respect to the severability of the provisions of this final rule. Each provision that the Agency has amended is capable of operating independently, and the Agency intends them to be severable. If any provision of this rule is determined by judicial review or operation of law to be invalid, the Agency would not intend that partial invalidation to render the remainder of this rule invalid. Likewise, if the application of any portion of this final rule to a particular circumstance were determined to be invalid, the agencies would intend that the rule remain applicable to all other circumstances.

Executive Orders 12866, 13563, and 14094

Executive Order 12866 (Regulatory Planning and Review) directs agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 (Executive Order on Modernizing Regulatory Review) supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review), and Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review). The Office of

Information and Regulatory Affairs has determined that this rulemaking is not a significant regulatory action under Executive Order 12866, as amended by Executive Order 14094. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at *www.regulations.gov.*

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). However, this rulemaking will have a direct impact on a number of industries that service VA loans. VA defines a servicer as a mortgage company that collects funds for a debt incurred by a borrower to purchase a home. When a loan becomes delinquent after a borrower misses one or more mortgage payments, servicers are responsible for servicing delinquent loans and working with the borrower to reach an agreement that will bring the loan current or avoid foreclosure whenever feasible.

A recent analysis indicated there are currently 450 servicers in varying industries that will be impacted by this rulemaking. This final rule will impose a one-time rule familiarization cost to servicers in 2024, estimated at $55.91 per servicer regardless of size. The $55.91 cost is derived by dividing the cost of rule familiarization, which is estimated to be $25,157, by the 450 servicers VA currently works with. To estimate the one-time rule familiarization cost, VA multiplies the number of servicers by the time needed for in-house or retained legal counsel to review and ensure compliance with the rule and their compensation rate. VA assumes that it would take 30 minutes for a lawyer to review the rulemaking. The compensation rate of the lawyers is estimated by multiplying their hourly wage rate ($78.74) by the fringe benefits factor, 1.42. Multiplying the number of servicers (450) by the time to review the rule (30 minutes) and their total compensation rate ($111.81 per hour) results in a one-time total cost of $25,157 in Fiscal Year (FY) 2024. This one-time cost in FY 2024 is offset by the long-term cost savings of this rulemaking from reduced agreement preparation and sharing efforts.

VA considers a rulemaking to have a ''significant economic impact'' when the impact associated with the rulemaking for a small entity equals or exceeds 1 percent of annual revenue. Thus, this rulemaking is not expected to have a significant economic impact on the participating small servicers. After the first year of implementation, there will be a monetary benefit realized by servicers due to the reduction in burden this rulemaking will accomplish. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Unfunded Mandates

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

Paperwork Reduction Act

Although this final rule contains provisions constituting collections of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521), there are no provisions associated with this rulemaking constituting any new collection of information or any revisions to the existing collection of information. The collections of information for 38 CFR 36.4317, 36.4319, and 36.4320 are currently approved by Office of Management and Budget (OMB) and have been assigned OMB control number 2900–0021.

Congressional Review Act

Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (known as the Congressional Review Act) (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not satisfying the criteria under 5 U.S.C. 804(2).

List of Subjects in 38 CFR Part 36

Condominiums, Housing, Indians, Individuals with disabilities, Loan programs—housing and community development, Loan programs—Indians, Loan programs—veterans, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Veterans.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved and signed this document on March 28, 2024, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Luvenia Potts,

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

For the reasons stated in the preamble, the Department of Veterans Affairs amends 38 CFR part 36 as set forth below:

PART 36—LOAN GUARANTY

Subpart B—Guaranty or Insurance of Loans to Veterans With Electronic Reporting

■ 1. The authority citation for part 36, subpart B continues to read as follows:

Authority: 38 U.S.C. 501 and 3720.

■ 2. Amend § 36.4301 by:
■ a. Removing the definition of ''Compromise sale'';
■ b. Revising the third sentence of ''Liquidation sale'';
■ c. Revising the definition of ''Repayment plan'';
■ d. Adding, in alphabetical order, the definition for ''Short sale''; and
■ e. Revising the definition of ''Special forbearance''.

The revisions and addition read as follows:

§ 36.4301 Definitions.

* * * * *

Liquidation sale. * * * This term also includes a short sale.

* * * * *

Repayment plan. This is a documented agreement by and between the borrower and the holder to reinstate a loan that is 61 or more calendar days delinquent, by requiring the borrower to pay each month over a fixed period (minimum of three months duration) the normal monthly payments plus an agreed upon portion of the delinquency each month.

* * * * *

Short sale. A sale to a third party for an amount less than is sufficient to repay the unpaid balance on the loan where the holder has agreed in advance to release the lien in exchange for the proceeds of such sale.

Special forbearance. This is a documented agreement by and between the holder and the borrower where the holder agrees to suspend all payments or accept reduced payments for one or more months, on a loan 61 or more calendar days delinquent, and the borrower agrees to pay the total delinquency at the end of the specified period or enter into a repayment plan.

* * * * *

§ 36.4315 [Amended]

■ 3. Amend § 36.4315(a) by removing ''written'' and adding in its place ''a documented''.

§ 36.4316 [Amended]

■ 4. Amend § 36.4316 by:
■ a. Removing ''documented'' in paragraphs (b)(2), (3), and (4); and
■ b. Removing ''written'' in paragraph (b)(6).

■ 5. Amend § 36.4317 by:
■ a. Removing ''agreement'' in paragraph (c)(18);
■ b. Removing ''Compromise sale'' and ''compromise sale'' and adding ''Short sale'' and ''short sale'', respectively, in paragraph (c)(21); and
■ c. Revising paragraphs (c)(30) and (31).

The revisions read as follows:

§ 36.4317 Servicer reporting requirements.

* * * * *

(c) * * *

(30) Basic claim information—when the servicer files a claim under guaranty. The servicer shall report this event within 365 calendar days of loan termination for non-VA purchase claims, and within 60 calendar days of the approval date for VA purchase claims.

(31) VA purchase settlement—when VA purchases a loan and the servicer reports the tax and insurance information. The servicer shall report this event within 60 calendar days of the VA purchase approval date.

* * * * *

§ 36.4319 [Amended]

■ 6. Amend § 36.4319 by:
■ a. Removing ''special forbearance agreements'' and ''compromise sales'' and adding in their place ''special forbearances'' and ''short sales'', respectively, in paragraph (a);
■ b. Removing ''Compromise Sale'' and adding in its place ''Short Sale'' in the table in paragraph (b);
■ c. Removing ''compromise sale'' and adding in its place ''short sale'' in paragraph (c)(4).

§ 36.4320 [Amended]

■ 7. Amend § 36.4320 by:
■ a. Removing ''Refunding'' and adding in its place ''VA purchase'' in the heading;
■ b. Removing ''refund'' and adding in its place ''purchase'' in paragraph (c); and
■ c. Removing ''2900–0362'' and adding in its place ''2900–0021'' in the parenthesis at the end of the section.

§ 36.4322 [Amended]

■ 8. Amend §§ 36.4322(e)(1), (1)(ii), (2), and (f)(1)(iii) by removing ''compromise sale'' each place it appears and adding ''short sale'' in its place.

[FR Doc. 2024–07113 Filed 4–9–24; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

Designation of Areas for Air Quality Planning Purposes

CFR Correction

This rule is being published by the Office of the Federal Register to correct an editorial or technical error that appeared in the most recent annual revision of the Code of Federal Regulations.

■ In title 40 of the Code of Federal Regulations, Part 81, revised as of July 1, 2023, in § 81.350, in the table titled ''Wisconsin—2010 Sulfur Dioxide NAAQS [Primary]'', the entry for ''Outagamie County (part)'' is removed.

[FR Doc. 2024–07673 Filed 4–9–24; 8:45 am]

BILLING CODE 0099–10–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 411, 413, 488, and 489

[CMS–1779–F2]

RIN 0938–AV02

Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities; Updates to the Quality Reporting Program and Value-Based Purchasing Program for Federal Fiscal Year 2024; Corrections

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Final rule; correction.

SUMMARY: This document corrects technical errors in the final rule that appeared in the August 7, 2023 **Federal Register**, entitled ''Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities; Updates to the Quality Reporting Program and Value-Based Purchasing Program for Federal Fiscal Year 2024''. The effective date was October 1, 2023.

DATES: This correcting document is effective April 10, 2024, and is applicable beginning October 1, 2023.

FOR FURTHER INFORMATION CONTACT: John Kane, (410) 786–0557, for information related to the SNF PPS.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2023–16249 of August 7, 2023 (88 FR 53200), there were technical errors that are identified and corrected in this correcting document. These corrections are applicable as if they had been included in the final rule entitled ''Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities; Updates to the Quality Reporting Program and Value-Based Purchasing Program for Federal Fiscal Year 2024'' (hereinafter referred to as the FY 2024 SNF PPS final rule), which was effective October 1, 2023.

II. Summary of Errors

A. Summary of Errors in the Preamble

On page 53221 of the FY 2024 SNF PPS final rule (88 FR 53200), we discussed our proposal to add the surgical option that allows a subset of subcategory 42.2—codes for displaced fractures to be eligible for one of two orthopedic surgery categories. Additionally, we stated that we would add this surgical option to the subcategory of M84.5—codes for pathological fractures to certain weight bearing bones to be eligible for one of two orthopedic surgery categories. In the final rule, we inadvertently stated that this proposal applied to 45 of the codes within the subcategory S42.2 codes and to 46 of the codes within the subcategory M84.5 codes. However, these numbers were inadvertently swapped, meaning that the proposal applied to 46 of the codes within the subcategory S42.2 codes and to 45 of the codes within the subcategory M84.5 codes. We are correcting these errors.

B. Summary and Corrections of Errors to Tables Posted on the CMS Website for the PDPM ICD–10 Mappings

We are correcting the following errors to the FY 2024 Patient Driven Payment Model (PDPM) ICD–10–CM mappings (hereinafter referred to as PDPM ICD–10 code mappings) that were made available on the CMS website at *https://www.cms.gov/medicare/medicare-fee-for-service-payment/snfpps/pdpm* in conjunction with the release of the FY 2024 SNF PPS final rule, as corrected by the correction notification that appeared in the October 4, 2023 **Federal Register**, entitled ''Medicare Program; Prospective

Payment System and Consolidated Billing for Skilled Nursing Facilities; Updates to the Quality Reporting Program and Value-Based Purchasing Program for Federal Fiscal Year 2024; Correction'' (88 FR 68486). The FY 2024 PDPM ICD–10 code mappings file may be accessed from the list of items under the ''PDPM Resources'' section of the website with an effective date of ''10–01–2023''.

The first table in the FY 2024 PDPM ICD–10 code mappings file displays the list of ICD–10 codes that are recorded in Item I0020B ICD Code of the Minimum Data Set (MDS) assessment to determine a patient's clinical category assignment under PDPM. First, we are correcting errors in the clinical category assignment of 2 codes, B99.8 (Other infectious disease) and B99.9 (Unspecified infectious disease) (lines 1071 and 1072 of the Excel spreadsheet) to reinstate their prior year's assignments from the FY 2023 SNF PPS final rule, as we proposed no changes in clinical categories in this code range in the FY 2024 SNF PPS proposed rule nor finalized them in the FY 2024 SNF PPS final rule. As such, the clinical category mapping for these two codes will be corrected to be ''Medical Management''.

Second, we are correcting errors in the clinical category assignments of codes within the S42.2 subcategory of ICD–10 codes (lines 32154 *et seq.*) and the M84.5 subcategory of ICD–10 codes (lines 17229 *et seq.*). As discussed in the FY 2024 SNF PPS final rule (88 FR 53221), we had proposed to add the surgical option that allows a subset of subcategory 42.2—codes for displaced fractures to be eligible for one of two orthopedic surgery categories. Additionally, we stated that we would add this surgical option to the subcategory of M84.5—codes for pathological fractures to certain weight bearing bones to be eligible for one of two orthopedic surgery categories. However, when updating the PDPM ICD–10 mapping for FY 2024 to reflect these changes, we inadvertently added the surgical option to a selection of ICD–10 codes for which we did not propose any changes. Further, we inadvertently did not add the surgical option for a selection of ICD–10 codes for which we did propose to do so.

Table 1 displays the list of affected ICD–10 codes for which we are correcting the clinical category assignments by adding the surgical option.

TABLE 1—AFFECTED CODES FROM THE MAPPING OF THE ICD–10–CM RECORDED IN ITEM I0020B OF THE MDS ASSESSMENT TO PDPM CLINICAL CATEGORIES ADDING SURGICAL OPTION

ICD–10–CM code	ICD–10–CM code description
M84550A	Pathological fracture in neoplastic disease, pelvis, initial encounter for fracture.
M84550D	Pathological fracture in neoplastic disease, pelvis, subsequent encounter for fracture with routine healing.
M84550G	Pathological fracture in neoplastic disease, pelvis, subsequent encounter for fracture with delayed healing.
M84550K	Pathological fracture in neoplastic disease, pelvis, subsequent encounter for fracture with nonunion.
M84550P	Pathological fracture in neoplastic disease, pelvis, subsequent encounter for fracture with malunion.
M84561A	Pathological fracture in neoplastic disease, right tibia, initial encounter for fracture.
M84561D	Pathological fracture in neoplastic disease, right tibia, subsequent encounter for fracture with routine healing.
M84561G	Pathological fracture in neoplastic disease, right tibia, subsequent encounter for fracture with delayed healing.
M84561K	Pathological fracture in neoplastic disease, right tibia, subsequent encounter for fracture with nonunion.
M84561P	Pathological fracture in neoplastic disease, right tibia, subsequent encounter for fracture with malunion.
M84562A	Pathological fracture in neoplastic disease, left tibia, initial encounter for fracture.
M84562D	Pathological fracture in neoplastic disease, left tibia, subsequent encounter for fracture with routine healing.
M84562G	Pathological fracture in neoplastic disease, left tibia, subsequent encounter for fracture with delayed healing.
M84562K	Pathological fracture in neoplastic disease, left tibia, subsequent encounter for fracture with nonunion.
M84562P	Pathological fracture in neoplastic disease, left tibia, subsequent encounter for fracture with malunion.
M84563A	Pathological fracture in neoplastic disease, right fibula, initial encounter for fracture.
M84563D	Pathological fracture in neoplastic disease, right fibula, subsequent encounter for fracture with routine healing.
M84563G	Pathological fracture in neoplastic disease, right fibula, subsequent encounter for fracture with delayed healing.
M84563K	Pathological fracture in neoplastic disease, right fibula, subsequent encounter for fracture with nonunion.
M84563P	Pathological fracture in neoplastic disease, right fibula, subsequent encounter for fracture with malunion.
M84564A	Pathological fracture in neoplastic disease, left fibula, initial encounter for fracture.
M84564D	Pathological fracture in neoplastic disease, left fibula, subsequent encounter for fracture with routine healing.
M84564G	Pathological fracture in neoplastic disease, left fibula, subsequent encounter for fracture with delayed healing.
M84564K	Pathological fracture in neoplastic disease, left fibula, subsequent encounter for fracture with nonunion.
M84564P	Pathological fracture in neoplastic disease, left fibula, subsequent encounter for fracture with malunion.
M84571A	Pathological fracture in neoplastic disease, right ankle, initial encounter for fracture.
M84571D	Pathological fracture in neoplastic disease, right ankle, subsequent encounter for fracture with routine healing.
M84571G	Pathological fracture in neoplastic disease, right ankle, subsequent encounter for fracture with delayed healing.
M84571K	Pathological fracture in neoplastic disease, right ankle, subsequent encounter for fracture with nonunion.
M84571P	Pathological fracture in neoplastic disease, right ankle, subsequent encounter for fracture with malunion.
M84572A	Pathological fracture in neoplastic disease, left ankle, initial encounter for fracture.
M84572D	Pathological fracture in neoplastic disease, left ankle, subsequent encounter for fracture with routine healing.
M84572G	Pathological fracture in neoplastic disease, left ankle, subsequent encounter for fracture with delayed healing.
M84572K	Pathological fracture in neoplastic disease, left ankle, subsequent encounter for fracture with nonunion.
M84572P	Pathological fracture in neoplastic disease, left ankle, subsequent encounter for fracture with malunion.

Table 2 displays the list of affected ICD–10 codes for which we are correcting the clinical category assignments by removing the surgical option.

TABLE 2—AFFECTED CODES FROM THE MAPPING OF THE ICD–10–CM RECORDED IN ITEM I0020B OF THE MDS ASSESSMENT TO PDPM CLINICAL CATEGORIES REMOVING SURGICAL OPTION

ICD–10–CM code	ICD–10–CM code description
M84551S	Pathological fracture in neoplastic disease, right femur, sequela.
M84552S	Pathological fracture in neoplastic disease, left femur, sequela.
S42201A	Unspecified fracture of upper end of right humerus, initial encounter for closed fracture.
S42201D	Unspecified fracture of upper end of right humerus, subsequent encounter for fracture with routine healing.
S42201G	Unspecified fracture of upper end of right humerus, subsequent encounter for fracture with delayed healing.
S42201K	Unspecified fracture of upper end of right humerus, subsequent encounter for fracture with nonunion.
S42201P	Unspecified fracture of upper end of right humerus, subsequent encounter for fracture with malunion.
S42202A	Unspecified fracture of upper end of left humerus, initial encounter for closed fracture.
S42202D	Unspecified fracture of upper end of left humerus, subsequent encounter for fracture with routine healing.
S42202G	Unspecified fracture of upper end of left humerus, subsequent encounter for fracture with delayed healing.
S42202K	Unspecified fracture of upper end of left humerus, subsequent encounter for fracture with nonunion.
S42202P	Unspecified fracture of upper end of left humerus, subsequent encounter for fracture with malunion.
S42214A	Unspecified nondisplaced fracture of surgical neck of right humerus, initial encounter for closed fracture.
S42214D	Unspecified nondisplaced fracture of surgical neck of right humerus, subsequent encounter for fracture with routine healing.
S42214G	Unspecified nondisplaced fracture of surgical neck of right humerus, subsequent encounter for fracture with delayed healing.
S42214K	Unspecified nondisplaced fracture of surgical neck of right humerus, subsequent encounter for fracture with nonunion.
S42214P	Unspecified nondisplaced fracture of surgical neck of right humerus, subsequent encounter for fracture with malunion.
S42215A	Unspecified nondisplaced fracture of surgical neck of left humerus, initial encounter for closed fracture.
S42215D	Unspecified nondisplaced fracture of surgical neck of left humerus, subsequent encounter for fracture with routine healing.
S42215G	Unspecified nondisplaced fracture of surgical neck of left humerus, subsequent encounter for fracture with delayed healing.
S42215K	Unspecified nondisplaced fracture of surgical neck of left humerus, subsequent encounter for fracture with nonunion.
S42215P	Unspecified nondisplaced fracture of surgical neck of left humerus, subsequent encounter for fracture with malunion.
S42224D	2-part nondisplaced fracture of surgical neck of right humerus, subsequent encounter for fracture with routine healing.
S42224K	2-part nondisplaced fracture of surgical neck of right humerus, subsequent encounter for fracture with nonunion.
S42224P	2-part nondisplaced fracture of surgical neck of right humerus, subsequent encounter for fracture with malunion.
S42225D	2-part nondisplaced fracture of surgical neck of left humerus, subsequent encounter for fracture with routine healing.
S42225K	2-part nondisplaced fracture of surgical neck of left humerus, subsequent encounter for fracture with nonunion.
S42225P	2-part nondisplaced fracture of surgical neck of left humerus, subsequent encounter for fracture with malunion.
S42231D	3-part fracture of surgical neck of right humerus, subsequent encounter for fracture with routine healing.
S42231K	3-part fracture of surgical neck of right humerus, subsequent encounter for fracture with nonunion.
S42231P	3-part fracture of surgical neck of right humerus, subsequent encounter for fracture with malunion.
S42232D	3-part fracture of surgical neck of left humerus, subsequent encounter for fracture with routine healing.
S42232K	3-part fracture of surgical neck of left humerus, subsequent encounter for fracture with nonunion.
S42232P	3-part fracture of surgical neck of left humerus, subsequent encounter for fracture with malunion.
S42241D	4-part fracture of surgical neck of right humerus, subsequent encounter for fracture with routine healing.
S42241K	4-part fracture of surgical neck of right humerus, subsequent encounter for fracture with nonunion.
S42241P	4-part fracture of surgical neck of right humerus, subsequent encounter for fracture with malunion.
S42242D	4-part fracture of surgical neck of left humerus, subsequent encounter for fracture with routine healing.
S42242K	4-part fracture of surgical neck of left humerus, subsequent encounter for fracture with nonunion.
S42242P	4-part fracture of surgical neck of left humerus, subsequent encounter for fracture with malunion.
S42254A	Nondisplaced fracture of greater tuberosity of right humerus, initial encounter for closed fracture.
S42254D	Nondisplaced fracture of greater tuberosity of right humerus, subsequent encounter for fracture with routine healing.
S42254G	Nondisplaced fracture of greater tuberosity of right humerus, subsequent encounter for fracture with delayed healing.
S42254K	Nondisplaced fracture of greater tuberosity of right humerus, subsequent encounter for fracture with nonunion.
S42254P	Nondisplaced fracture of greater tuberosity of right humerus, subsequent encounter for fracture with malunion.
S42255A	Nondisplaced fracture of greater tuberosity of left humerus, initial encounter for closed fracture.
S42255D	Nondisplaced fracture of greater tuberosity of left humerus, subsequent encounter for fracture with routine healing.
S42255G	Nondisplaced fracture of greater tuberosity of left humerus, subsequent encounter for fracture with delayed healing.
S42255K	Nondisplaced fracture of greater tuberosity of left humerus, subsequent encounter for fracture with nonunion.
S42255P	Nondisplaced fracture of greater tuberosity of left humerus, subsequent encounter for fracture with malunion.
S42264A	Nondisplaced fracture of lesser tuberosity of right humerus, initial encounter for closed fracture.
S42264D	Nondisplaced fracture of lesser tuberosity of right humerus, subsequent encounter for fracture with routine healing.
S42264G	Nondisplaced fracture of lesser tuberosity of right humerus, subsequent encounter for fracture with delayed healing.
S42264K	Nondisplaced fracture of lesser tuberosity of right humerus, subsequent encounter for fracture with nonunion.
S42264P	Nondisplaced fracture of lesser tuberosity of right humerus, subsequent encounter for fracture with malunion.
S42265A	Nondisplaced fracture of lesser tuberosity of left humerus, initial encounter for closed fracture.
S42265D	Nondisplaced fracture of lesser tuberosity of left humerus, subsequent encounter for fracture with routine healing.
S42265G	Nondisplaced fracture of lesser tuberosity of left humerus, subsequent encounter for fracture with delayed healing.
S42265K	Nondisplaced fracture of lesser tuberosity of left humerus, subsequent encounter for fracture with nonunion.
S42265P	Nondisplaced fracture of lesser tuberosity of left humerus, subsequent encounter for fracture with malunion.
S42271A	Torus fracture of upper end of right humerus, initial encounter for closed fracture.
S42271D	Torus fracture of upper end of right humerus, subsequent encounter for fracture with routine healing.
S42271G	Torus fracture of upper end of right humerus, subsequent encounter for fracture with delayed healing.
S42271K	Torus fracture of upper end of right humerus, subsequent encounter for fracture with nonunion.
S42271P	Torus fracture of upper end of right humerus, subsequent encounter for fracture with malunion.
S42272A	Torus fracture of upper end of left humerus, initial encounter for closed fracture.
S42272D	Torus fracture of upper end of left humerus, subsequent encounter for fracture with routine healing.
S42272G	Torus fracture of upper end of left humerus, subsequent encounter for fracture with delayed healing.
S42272K	Torus fracture of upper end of left humerus, subsequent encounter for fracture with nonunion.
S42272P	Torus fracture of upper end of left humerus, subsequent encounter for fracture with malunion.

TABLE 2—AFFECTED CODES FROM THE MAPPING OF THE ICD–10–CM RECORDED IN ITEM I0020B OF THE MDS ASSESSMENT TO PDPM CLINICAL CATEGORIES REMOVING SURGICAL OPTION—Continued

ICD–10–CM code	ICD–10–CM code description
S42294A	Other nondisplaced fracture of upper end of right humerus, initial encounter for closed fracture.
S42294D	Other nondisplaced fracture of upper end of right humerus, subsequent encounter for fracture with routine healing.
S42294G	Other nondisplaced fracture of upper end of right humerus, subsequent encounter for fracture with delayed healing.
S42294K	Other nondisplaced fracture of upper end of right humerus, subsequent encounter for fracture with nonunion.
S42294P	Other nondisplaced fracture of upper end of right humerus, subsequent encounter for fracture with malunion.
S42295A	Other nondisplaced fracture of upper end of left humerus, initial encounter for closed fracture.
S42295D	Other nondisplaced fracture of upper end of left humerus, subsequent encounter for fracture with routine healing.
S42295G	Other nondisplaced fracture of upper end of left humerus, subsequent encounter for fracture with delayed healing.
S42295K	Other nondisplaced fracture of upper end of left humerus, subsequent encounter for fracture with nonunion.
S42295P	Other nondisplaced fracture of upper end of left humerus, subsequent encounter for fracture with malunion.

Given these errors, we are republishing the PDPM ICD–10 code mappings accordingly on the CMS website at *https://www.cms.gov/medicare/medicare-fee-for-service-payment/snfpps/pdpm,* applicable to October 1, 2023.

III. Waiver of Proposed Rulemaking

Under section 553(b) of the Administrative Procedure Act (the APA) (5 U.S.C. 553(b)), the agency is required to publish a notice of proposed rulemaking in the **Federal Register** before the provisions of a rule take effect. Similarly, section 1871(b)(1) of the Social Security Act (the Act) requires the Secretary to provide for notice of the proposed rule in the **Federal Register** and provide a period of not less than 60 days for public comment. In addition, section 553(d) of the APA and section 1871(e)(1)(B)(i) of the Act mandate a 30-day delay in effective date after issuance or publication of a rule. Sections 553(b)(B) and 553(d)(3) of the APA provide for exceptions from the APA notice and comment, and delay in effective date requirements; in cases in which these exceptions apply, sections 1871(b)(2)(C) and 1871(e)(1)(B)(ii) of the Act provide exceptions from the notice and 60-day comment period and delay in effective date requirements of the Act as well. Section 553(b)(B) of the APA and section 1871(b)(2)(C) of the Act authorize an agency to dispense with normal notice and comment rulemaking procedures for good cause if the agency makes a finding that the notice and comment process is impracticable, unnecessary, or contrary to the public interest, and includes a statement of the finding and the reasons for it in the rule. In addition, section 553(d)(3) of the APA and section 1871(e)(1)(B)(ii) allow the agency to avoid the 30-day delay in effective date where such delay is contrary to the public interest and the agency includes in the rule a statement of the finding and the reasons for it.

In our view, this correcting document does not constitute a rulemaking that would be subject to notice and comment requirements. This document merely corrects technical errors in the FY 2024 SNF PPS final rule and in the tables referenced in the final rule. The corrections contained in this document are consistent with, and do not make substantive changes to, the policies and payment methodologies that were proposed, subject to notice and comment procedures, and adopted in the FY 2024 SNF PPS final rule. As a result, the corrections made through this correcting document are intended to resolve inadvertent errors so that the rule accurately reflects the policies adopted in the final rule. Even if this were a rulemaking to which the notice and comment and delayed effective date requirements applied, we find that there is good cause to waive such requirements. It is in the public interest for providers to receive appropriate payments in as timely a manner as possible, and to ensure that the FY 2024 SNF PPS final rule and the tables referenced in the final rule accurately reflect our methodologies, payment rates, and policies. This correcting document ensures that the FY 2024 SNF PPS final rule and the tables referenced in the final rule accurately reflect these methodologies and policies. Therefore, we believe we have good cause to waive the notice and comment and effective date requirements.

IV. Correction of Errors in the Preamble

In FR Doc. 2023–16249 of August 7, 2023 (88 FR 53200), make the following corrections:

1. On page 53221, second column, third full paragraph:

a. Second sentence that reads, ''We proposed adding the surgical option that allows 45 subcategory S42.2—codes for displaced fractures to be eligible for one of two orthopedic surgery categories.'' is corrected to read, ''We proposed adding the surgical option that allows 46 subcategory S42.2—codes for displaced fractures to be eligible for one of two orthopedic surgery categories.''

b. Fourth sentence that reads, ''We also proposed adding the surgical option to subcategory 46 M84.5—codes for pathological fractures to certain major weight-bearing bones to be eligible for one of two orthopedic surgery categories.'' is corrected to read, ''We also proposed adding the surgical option to subcategory 45 M84.5—codes for pathological fractures to certain major weight-bearing bones to be eligible for one of two orthopedic surgery categories.''

Elizabeth J. Gramling,

Executive Secretary to the Department, Department of Health and Human Services.

[FR Doc. 2024–07522 Filed 4–9–24; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 36, 51, and 54

[WC Docket Nos. 10–90, 23–328, 14–58, 09–197; WT Docket No. 10–208; FCC 23–87; FR ID 204795]

Connect America Fund, Alaska Connect Fund, ETC Annual Reports and Certifications, Telecommunications Carriers Eligible To Receive Universal Service Support, Universal Service Reform—Mobility Fund

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (FCC or Commission) adopts a Report and Order (Order) amending existing rules and requirements governing the management and administration of the

Commission's Universal Service Fund (USF) high-cost program. The modifications adopted in the Order streamline processes, align timelines, and refine certain rules to more precisely address specific situations experienced by carriers.

DATES: Effective May 10, 2024, except for the amendments to §§ 36.4 (amendatory instruction 2), 54.205 (amendatory instruction 7), 54.313 (amendatory instruction 10), 54.314 (amendatory instruction 11), 54.316 (amendatory instruction 13), 54.903 (amendatory instruction 18), and 54.1306 (amendatory instruction 22), which are delayed indefinitely. The Commission will publish a document in the **Federal Register** announcing the effective date.

FOR FURTHER INFORMATION CONTACT: For further information, please contact, Nissa Laughner, Attorney Advisor, Telecommunications Access Policy Division, Wireline Competition Bureau, at *Nissa.Laughner@fcc.gov* or 202–418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order in WC Docket Nos. 10–90, 23–328, 14–58, 09–197 and WT Docket No. 10–208; FCC 23–87, adopted on October 19, 2023, and released on October 20, 2023, with an Erratum issued by the Wireline Competition Bureau on Feb. 13, 2024. The full text of this document is available at the following internet address: *https://docs.fcc.gov/public/attachments/FCC-23-87A1.pdf.*

I. Adopting High-Cost Program Administrative Improvements

1. The Commission adopts its proposal to revise § 54.313(i) of its rules to streamline the process for submitting annual high-cost information and certifications by requiring that such filings be made only with the universal service program administrator, *i.e.,* the Universal Service Administrative Company (USAC). Currently, this rule requires high-cost support recipients to file this information with the Commission, with USAC, and with the relevant state commission or relevant authority in a U.S. Territory, or Tribal government, as appropriate, resulting in redundant and unnecessary administrative burdens on high-cost support recipients. In addition to relieving recipients of these burdens, this rule change is warranted because the Commission can take advantage of technological advances to make this information more readily available to all interested parties by using the benefits of a centralized, online collection of information and improving access and records management. Several commenters support this change, and the Nebraska Public Service Commission asks the Commission to ensure that states retain full access to the annual reports. The Commission agrees that states should retain full access to the annual reports and it directs USAC to continue to provide access to this information to the States, U.S. Territories, and Tribal governments electronically via links to the data on USAC's website. Accordingly, the Commission finds that modifying § 54.313(i) of its rules to limit submission of the annual high-cost report to USAC is well warranted.

2. The Commission similarly adopts its proposal to revise § 54.314 of its rules to require states that desire Eligible Telecommunication Carriers (ETCs) to receive high-cost support and ETCs not subject to state jurisdiction to file annual reports with USAC only, rather than both USAC and the Commission's Office of the Secretary (OSEC). Several commenters support this modification, and none opposes. The Commission notes that its staff coordinates routinely with USAC, so this modification should have no impact on its ability to review and monitor these filings as part of its program oversight. The Wireless internet Service Providers Association (WISPA) supports this modification but only if reports are made publicly available so that funding recipients can ensure that the certification has been received and can demonstrate this to third parties, such as potential investors. The Commission finds that WISPA's request is reasonable. The Commission thus modifies its rules to require the submission of annual certifications under § 54.314 of the Commission's rules with USAC only and commit to making this information publicly available.

3. Third, the Commission adopts its proposal to more closely align support reductions with an ETC's failure to certify by the deadlines established in its rules. Current rules provide that support reductions do not occur until January of the year following the year when the ETC misses a reporting deadline. The revised rules the Commission adopts in this document will instead reduce support in the month immediately following the notice of support reduction to the eligible telecommunications carrier from USAC or as soon as feasible thereafter. Because support reductions are based on the number of days late, and payments usually occur mid-month, in situations where a filing is not received in time for USAC to calculate the requisite support reduction for the next month's payment, USAC will implement the support reduction as soon as feasible. No commenter opposes this change and CTIA—The Wireless Association (CTIA) agrees that requiring USAC to implement late filing support reductions more promptly by reducing support in the month immediately following the issuance of a notice of support reduction or as soon as feasible immediately thereafter avoids confusion and improves accountability.

4. The Commission modifies the reporting requirements for performance testing to require all high-cost support recipients serving fixed locations to report and certify performance testing results on a quarterly basis, rather than annually. High-cost support recipients must perform broadband performance testing one week out of each quarter. All high-cost support recipients, including those that are in compliance with speed and latency requirements, will be required to report and certify the results of the performance tests quarterly rather than annually. This modification will allow the Commission to better assess whether carriers are on track to meeting the Commission's performance measures requirements and to determine whether there are significant problems with a carrier's network that may interfere with consumer service. The Wireline Competition Bureau (Bureau) will continue to assess compliance with program requirements based on the annual testing results (*i.e.,* annual calculations), and carriers found not compliant will have support withheld until the carrier achieves a full quarter of compliance. No commenter opposes this modification, and NTCA—The Rural Broadband Association (NTCA) supports quarterly certification of performance test results for all high-cost support recipients, stating that reporting and certifying a carrier's performance testing results on a quarterly basis so the burden is minimal while also ensuring access to results enhances the Commission's oversight.

5. Carriers are required to report and certify locations in the High Cost Universal Broadband portal (HUBB) by March 1st annually but some carriers may not have reported locations when scheduled to begin performance pre-testing or testing. As a result, the Commission recognizes that certification of HUBB locations on March 1st may impede the carrier's ability to complete some of its testing. In these circumstances, the Bureau may exercise discretion when assessing the scope of a carrier's compliance or when implementing support withholdings.

6. Currently, the Commission requires quarterly reporting of carriers' pre-testing data, reflecting the results of tests conducted prior to the commencement of the official test period. Those quarterly testing results must be reported and certified within one week after the end of the quarter in which the tests are conducted, to provide insight into carriers' experience with the testing process. The Commission adopts a similar schedule of quarterly reporting filings for all high-cost carriers' testing. Once effective, all high-cost carriers will be required to report and certify their quarterly performance testing results within two weeks, rather than within one week, after the end of the quarter in which the tests are conducted. The Commission provides two weeks to offset the fact that, for administrative ease, it declines to adopt any grace period: first quarter testing results will be due April 15th, second quarter results will be due July 15th, third quarter results will be due October 15th, and fourth quarter results will be due January 15th. The Commission directs the Bureau to announce when quarterly reporting and certification will go into effect.

7. The Commission believes that establishing a specific reporting schedule will provide certainty, promote accountability, and conform with timelines for other testing protocols to minimize confusion. Given that carriers will be certifying locations quarterly, support withholding for non-compliance may be implemented sooner than when reports were due by July 1st annually. This will ensure that the withholding is closer in time to the determination of noncompliance and encourage the non-compliant carrier to improve its performance so that it can regain the withheld support.

8. Under this new quarterly certification schedule, the Commission implements support reductions for late performance measures reporting based on the current framework under § 54.313(j) that reduces support based on the number of days late, but factoring in that it is requiring quarterly filing certifications. Support reductions due to late filings will be assessed at the end of the fourth quarter and will be based on total number of days late divided by four, then rounded to the nearest whole number. When that number is between 1 and 7, a carrier will have its support reduced an amount equivalent to seven days in support; when that number is 8 or higher, a carrier will have its support reduced on a pro-rata basis equivalent to the period of non-compliance (*i.e.,* the number of days), plus the minimum seven-day reduction.

9. The Commission declines to relieve privately held rate-of-return carriers that receive Alternative Connect America Model (A–CAM) support or Alaska Plan support of the requirement to file annually a report of the company's financial conditions and operations. NTCA had sought this relief for all privately held rate-of-return carriers that receive A–CAM support or other fixed support mechanisms, such as the Alaska Plan, and the Commission sought comment on this issue in the *Administrative Notice of Proposed Rulemaking (NPRM),* 87 FR 36283, June 16, 2022.

10. Although NTCA and the Alaska Telecom Association (ATA) support eliminating this requirement, the Commission is not persuaded by their arguments. Moreover, the Commission has determined that the public interest benefits of collecting the information—understanding the efficacy of the model and helping to ensure that support is sufficient but not excessive—outweigh any burdens.

11. The Commission concluded in the *USF/Intercarrier Compensation (ICC) Transformation Order,* 76 FR 73830, November 29, 2011, that it is not necessary to require publicly traded companies to submit financial information because it could obtain such information directly for Securities and Exchange Commission registrants. At the same time, it declined to impose such a requirement on privately held price cap carriers receiving model-based support because the Commission ''expect[ed] that a model developed through a transparent and rigorous process will produce support levels that are sufficient but not excessive.''

12. NTCA argues that A–CAM carriers are similarly ''recipients of fixed support, which the Commission has already recognized leads them to being 'disciplined by market forces' and which should be the dispositive factor here.'' However, what the Commission actually stated was that ''support awarded through competitive processes,'' not model-based support, ''will be disciplined by market forces.'' And while the Commission concedes that, as NTCA notes, ''it is not true across the board'' that recipients of Connect America Fund (CAF) Phase II model-based support were publicly traded companies, the vast majority were, and as such their financial information was publicly available. Given these circumstances, it was sound policy not to require this information in that context. In contrast, there are many more rate-of-return carriers receiving A–CAM support, and many more of them are privately held and, thus, their information is not readily available to the Commission. The availability of support recipients' financial information enables the Commission to evaluate whether model-based support is actually sufficient but not excessive. Moreover, all high-cost support recipients have an obligation to use such support only for its intended purpose, and financial information helps the Commission validate compliance with this requirement. Thus, the Commission finds that the availability of the financial information of A–CAM carriers will help it evaluate whether A–CAM produces support levels that are sufficient but not excessive, and as such, it is important for the Commission to continue to collect such information.

13. ATA argues that Alaska Plan carriers' support is ''parallel to model-based support in that it is frozen at a set level'' and ''intended to be sufficient to support a carrier's performance obligations, but is not excessive because the support was frozen at a historic cost-based level which has in effect declined over time as costs increased.'' However, just because Alaska Plan support is frozen, does not ensure that the support is not excessive. The Commission finds that the continued availability of the financial information of Alaska carriers enables it to evaluate whether Alaska Plan carriers' support is sufficient but not excessive.

14. The Commission adopts its proposal to modify its rules to create a consistent, one-time grace period for all compliance filings with grace periods. Specifically, the Commission establishes a grace period that allows filers to submit compliance filings ''within four business days'' of the relevant due date without risking a finding of non-compliance for missing the filing deadline. Establishing a uniform grace period will reduce confusion and is supported by all commenters who addressed the issue, although WISPA prefers that the grace period be set at five business days instead of four. The Commission finds that a four-day grace period is adequate. As the Commission explained in the *Administrative NPRM,* it proposed to establish a set grace period to eliminate confusion. Currently, several Commission rules identify a specific date, after the due date, by which carriers could file reports without a support reduction if they had not previously missed a deadline, while other rules identified the grace period as three or four days after the filing deadline. The Commission also clarifies that the due date is day zero, so the day after the due date is day one. For

example, where a filing is due March 1, recipients must file by the end of March 5 or be subject to a support reduction. Consistent with the Commission's Computation of Time rule, if March 5 falls on a weekend or holiday, the filing must be made by the end of the next business day to avoid the support reduction. The Commission also clarifies that, by this rule modification, it is not establishing a new opportunity to utilize a grace period for carriers that have already taken advantage of the one-time grace period available to them.

15. The Commission modifies its rules to adopt uniform deployment, certification, and location reporting deadlines for all CAF Phase II auction support recipients (including recipients of support allocated through New York's New NY Broadband program). In doing so, the Commission codifies and makes permanent the Bureau's decision to waive recipient-specific reporting deadlines based on the date of authorization in favor of uniform reporting deadlines for all of these recipients, finding that this approach alleviates unnecessary administrative burdens and better facilitates Commission oversight. Two commenters support this change, and none oppose it. Accordingly, the Commission modifies its rules to provide that all CAF Phase II auction support recipients must comply with deployment milestones by deadlines occurring at the end of the specified calendar year (rather than the date the Bureau authorized the support recipient to receive support) and must meet annual certification and location reporting requirements (annual deployment report) as of March 1st annually, including reporting necessary to demonstrate compliance with the prior year milestone. In addition, the Commission modifies § 54.316(b)(7) of its rules regarding the certification deadlines for the Bringing Puerto Rico Together Fund stage 2 fixed program and the Connect USVI Fund stage 2 fixed program to make explicit the annual March 1st deadline, as specified in the respective authorization public notices, which aligns those programs' rules with the rules for other high-cost support mechanisms.

16. The Commission declines to amend § 54.316(a) of its rules to require ETCs receiving high-cost support and subject to defined deployment obligations to report the ''maximum speeds actually being offered, advertised, or delivered to customers.'' The Commission agrees with WISPA and CTIA, the only commenters to weigh in on this proposal, that such an amendment would result in collection of information similar to data the Commission already collects through its performance testing program and in fulfillment of its Broadband Data Collection (BDC) responsibilities. Through the performance testing program, the Commission assesses compliance with public service requirements, including speed and latency standards, by requiring high-cost support recipients to perform a minimum of one download test and one upload test per testing hour at a certain number of randomly chosen testing locations and to report this information to the Commission. Ultimately, the Commission will use this information to assess performance throughout the provider's entire supported service area. In addition, under the BDC, each facilities-based provider of fixed broadband internet access service must report maximum advertised download and upload speeds at the location level (with reference to the Broadband Serviceable Location Data Fabric). For these reasons, the proposed modification of § 54.316(a) would result in a largely redundant reporting requirement, and the Commission declines to adopt it.

17. The Commission adopts its proposal to amend § 54.316(a)(1) of its rules to more accurately reflect the deployed locations reporting obligations of support recipients. Currently, this rule directs ''recipients of high-cost support with defined broadband deployment obligations'' to ''provide to [USAC] on a recurring basis information regarding the locations to which the [ETC] is offering broadband service in satisfaction of its public interest obligations. . . .'' All filers subject to this requirement have a specific annual deadline for submitting this information, and the Commission finds that this section's reference to ''recurring'' filings is superfluous. Accordingly, the Commission modifies the rule to remove this language.

18. The Commission modifies its voice and broadband rate certification rules to clarify the reporting period. Specifically, the Commission makes explicit that carriers submitting the annual FCC Form 481 are certifying compliance with both the annual voice and broadband pricing benchmarks adopted in the prior calendar year ending the last day of December. As explained in the *Administrative NPRM,* when the Commission moved the annual FCC Form 481 filing deadline to July 1st, the Commission moved the date for the relevant voice rates to the rates in place as of June 1st the year the report was filed, as opposed to the prior year. Maintaining the rule's unique time period for voice rate certifications creates unnecessary confusion. Prior to the adoption of the rate floor provision, all certifications in Form 481 applied to the preceding calendar year, a uniformity to which the Commission returns with the adoption of this rule modification. For example, the support recipient submitting a Form 481 on July 1, 2024, will certify compliance during 2023 with voice and broadband benchmarks set for the 2023 calendar year (as announced in 2022). The Commission further updates the rule to reflect that the annual public notice announcing the benchmarks is issued by the Bureau and Office of Economics and Analytics.

19. Relatedly, in its comments, Teleguam Holdings LLC (GTA) asserts that the Commission should release its reasonable comparability benchmark rates earlier in the year (or extend the filing deadline for this certification) in order to allow support recipients sufficient time to modify their rates. The Commission agrees with GTA that release of these benchmark rates too close to the year-end can impose on support recipients, especially smaller companies, significant administrative burdens in effectuating rate changes at the start of the applicable year. Therefore, the Commission will endeavor to release these rates earlier in the year.

20. The Commission amends § 54.316(a) of its rules to make clear that it will permit high-cost support recipients to report and certify locations that should have been reported for a prior reporting year, even after the reporting deadline for that year, in future annual deployment reports and to count these locations (hereinafter ''late-reported locations'') toward their defined deployment obligations. To ensure that support recipients are motivated to submit complete and timely annual deployment reports, the Commission adopts a support reduction mechanism that will apply to all late-reported locations due to be reported after the effective date of the Order. For the submission of late-reported locations that should have reported before the effective date of the Order, the Commission exercises its discretion to not apply this mechanism.

21. Under § 54.316(a) of the Commission's rules, support recipients reporting in the HUBB have a duty to report all qualifying locations to which the support recipient deployed service during the relevant reporting period (the prior year) by March 1st, including locations that, if reported, would result in a carrier exceeding an interim or final milestone. As explained in the

Administrative NPRM, there is currently no mechanism by which support recipients can later submit and certify locations toward satisfaction of defined deployment obligations if the recipient missed the reporting deadline for those locations. Creating such a mechanism also better facilitates compliance with support recipients' general duty under § 1.17 of the Commission's rules to correct or amend information reported to the Commission and helps ensure that the Commission may effectively assess these recipients' progress in deploying service.

22. In the *Administrative NPRM,* the Commission proposed a formula for a support reduction mechanism for late-reported locations that would take into account the relative due diligence of support recipients in identifying and reporting locations. Specifically, the Commission proposed ''a support reduction mechanism where recipients' support will be reduced for [late-reported] locations based on the percentage of a recipient's total locations for the reporting year being reported after the deadline and the number of days after the deadline.'' The Commission adopts this formula with certain modifications to address concerns raised by commenters and to balance accountability with administrative burden.

23. As an initial matter, the Commission rejects NTCA's argument that any support reduction is unnecessary because support recipients are already sufficiently motivated to report and amend their filings to avoid possible default consequences and to gain the benefits of demonstrating to the public their deployment efforts. While, ultimately, support recipients may need to submit late-reported locations to avoid default, they would have no particular motivation to do so unless and until default is imminent, absent any consequence for late reporting. Indeed, acceptance of late-reported locations for the purpose of counting these locations toward defined deployment obligations at any time during the deployment period without consequence would encourage a lackadaisical approach to identifying and reporting locations on a timely basis and potentially could delay or disrupt verifications of compliance with milestones. Further, many support recipients are likely to delay deployment to the most difficult to serve areas where locations can be more difficult to assess, *e.g.,* where newly deployed areas are missing postal addresses. Support recipients may thus be motivated to delay reporting of certain easily identifiable locations in other earlier deployed areas in order to increase the likelihood of passing verification for later milestones, *i.e.,* by closing the non-compliance gap or increasing the probability of passing under the statistical measures used in the verification process. Finally, customers' goodwill toward their service providers is unlikely to be greatly affected by reporting delays unless the number of unreported locations is substantial and/or causes a milestone failure, and therefore, this concern is unlikely to be a significant factor in motivating support recipients to accurately assess and timely report or amend their annual deployment reports.

24. In their comments, GCI Communication Corp. (GCI) and NTCA object to the use of the support reduction mechanism as proposed in the *Administrative NPRM,* asserting that it would result in large variability in support reductions and have a disproportionately negative impact on those support recipients with fewer locations to serve and/or slower deployments at the beginning of their deployment term. While the Commission acknowledges that carriers with fewer deployed locations in a given year risk a larger support reduction for submitting late-reported locations for that year, it also notes that the time and effort associated with identifying and correctly reporting deployed locations should generally scale based on the number of locations deployed in a given year. In other words, as the number of deployed locations reported in a given year increases, so too do the burdens on carriers assessing locations and the associated likelihood of omitting a deployed location. Accordingly, this ratio is a reasonable measure of the relative due diligence by the reporting carrier warranting its incorporation in the support reduction formula.

25. GCI also asserts that ''[t]he penalties for providers who timely certified their deployed locations and need to add additional locations should not be worse than the penalties for failure to deploy on time,'' *i.e.,* a scaled withholding of support during a set time frame (cure period) during which time the carrier may recover withheld support upon demonstration of compliance. The Commission rejects GCI's attempt to analogize late reporting to delayed deployment. The cure period serves the Commission's overriding interest in maximizing deployment benefits by providing noncompliant carriers with the time to come into compliance by continuing to build the network. Carriers that seek to report late-reported locations do not need a cure period to provide them with additional time to file the locations. There may be circumstances where the support recipient has acted in good faith when deploying its network and reporting locations, only to learn of reporting errors during the verification process, such as the reporting of ineligible locations as eligible locations. In these circumstances, the support recipients may come into compliance by reporting locations newly deployed within the cure period (without support reduction) and/or reporting late-reported locations subject to the support withholding the Commission adopts here. Accordingly, all carriers reporting late-reported locations, whether they are in the cure period or not, are similarly situated in terms of support reduction consequences.

26. The Commission does, however, recognize that in certain circumstances application of the proposed formula would result in a significant support reduction that could threaten the ability of the support recipient to complete deployment, meet performance standards, and satisfy public interest obligations. The Commission also recognizes that some limited modification to the withholding formula would produce greater consistency in the amount of support withheld among support recipients with similar obligations and receiving similar support amounts, thus addressing some of GCI's expressed concerns. Accordingly, the Commission modifies the proposed formula to provide for a maximum per-day, per-location reduction of seven dollars ($7). The Commission also caps the duration multiplier at 15 days if the late-reported locations are filed as of the next reporting deadline after the locations should have been filed and at 30 days (for each instance of late reporting) if the late-reported locations are filed at any time thereafter. Further, the Commission adopts a one-time de minimis exception from support withholding for late-reported locations deployed in any single year that are less than five percent of the locations that were filed in the relevant reporting year. The Commission thus acknowledges GCI's and NTCA's concerns regarding the likelihood that carriers will make a minimum number of ''inevitable'' errors in reporting despite the exercise of due diligence, while also striking an appropriate balance to ensure that support recipients will make best efforts to avoid such errors.

27. Finally, and contrary to the Commission's tentative conclusion in the *Administrative NPRM,* it adopts a one-time grace period for amending an

annual filing with additional locations consistent with the grace period afforded support recipients that fail to submit their annual filing in § 54.316(c)(2)(iii) of its rules. The Commission finds that such one-time grace period, like that granted for late annual filings, places a minimum burden on the resources dedicated to program administration and evaluation of location information while accommodating the potential for a one-time administrative error. This is a particularly opportune time for the adoption of this grace period as carriers have been in the process of assessing their deployed locations for the mandatory BDC filings. The Commission will apply the support reduction for the filing of late-reported locations in the next month immediately following the notice of support reduction to the eligible telecommunications carrier from USAC or as soon as feasible thereafter.

28. To encourage support recipients to complete annual reviews of already served areas to identify unreported or misreported locations and to immediately report those locations even if the support recipient does not perceive such locations as necessary to meet interim deployment milestones, the Commission will not apply the support reduction consequence to any locations that were deployed in years prior to the effective date of this rule change but reported after the effective date of this rule. The Commission thus dismisses as moot all pending petitions for waiver to allow such reporting.

29. In addition, the Commission will not reduce support for late-reported locations reported after the support recipient has demonstrated compliance with the final milestone. Reducing support under these circumstances, where the benefit to carriers of such reporting is significantly less, would likely result in some support recipients failing to amend their filings. In addition, after the conclusion of the deployment period (including any cure period), the Commission will have a lesser stake in motivating timely reporting of every deployed location with a support reduction mechanism because such reporting will not threaten to disrupt verification processes. The Commission makes clear, however, that its approach to late-reported locations adopted here is independent of the obligation to amend filings under § 1.17 of its rules that attaches from the moment of filing and which could lead to forfeiture consequences, even in the absence of intentional misreporting and even after the demonstration of compliance with final deployment requirements. Support recipients have a continuing obligation to timely amend every annual deployment report upon discovery of an inaccuracy or omission.

30. In this document the Commission amends its rules to provide a simpler process for rate-of-return local exchange carriers (LECs) seeking to merge, consolidate, or acquire one or more rate-of-return study areas to calculate the new entity's Access Recovery Charge (ARC), CAF—Intercarrier Compensation (ICC) support, and reciprocal compensation and switched access rate caps. The Commission finds that the rule revisions proposed in the *Administrative NPRM* will significantly reduce the administrative burdens on rate-of-return LECs seeking to increase efficiencies and productivity through these transactions and provide predictability to carriers considering such transactions, ultimately benefiting consumers. The limited record received on the rule revisions proposed in the *Administrative NPRM* supports the proposed revisions, with one commenter agreeing that the proposals ''reflect a practical and effective step forward to streamline the merger and acquisition process. . . .'' No party opposes these proposed changes. Accordingly, the Commission now adopts those proposed changes and revises its rules to eliminate the need for a rate-of-return LEC that is involved in a merger, consolidation, or acquisition with another rate-of-return carrier to obtain a waiver of the applicable intercarrier compensation rules when certain conditions apply. The Commission also adopts a streamlined process that will apply in those cases where carriers are still required to seek a waiver of the Commission's rules.

31. In the *USF/ICC Transformation Order,* the Commission capped rate-of-return carriers' reciprocal compensation and interstate switched access rates and most intrastate switched access rates at the rates in effect on December 29, 2011. At the same time, the Commission adopted a multi-year transition for reducing most terminating switched access rates to bill-and-keep. As part of these reforms, the Commission adopted the ARC, which allows rate-of-return carriers to recover from end-users a portion of the intercarrier compensation revenues lost due to the Commission's reforms, up to a defined amount (Eligible Recovery) for each year of the transition. If the projected ARC revenues are not sufficient to cover the entire Eligible Recovery amount, rate-of-return carriers may elect to collect the remainder in CAF ICC support.

32. The calculation of a rate-of-return LEC's Eligible Recovery begins with its Base Period Revenue. A rate-of-return carrier's Base Period Revenue is the sum of certain terminating intrastate switched access revenues and net reciprocal compensation revenues received by March 31, 2012, for services provided during Fiscal Year (FY) 2011, and the projected revenue requirement for interstate switched access services for the 2011–2012 tariff period. A rate-of-return LEC's Base Period Revenue is calculated only once, but is adjusted during each step of the intercarrier compensation recovery mechanism calculations for each year of the transition. Specifically, the Base Period Revenue for rate-of-return carriers has been reduced by five percent each year, beginning in 2012, the first year of reform. A rate-of-return carrier's Eligible Recovery is equal to the adjusted Base Period Revenue for the year in question, less, for the relevant year of the transition, the sum of: (1) projected terminating intrastate switched access revenue; (2) projected interstate switched access revenue; and (3) projected net reciprocal compensation revenue. Eligible Recovery is also adjusted to reflect certain demand true-ups.

33. The Commission's existing rules for calculating Eligible Recovery do not address the adjustments that are necessary when study areas are merged after one company acquires all or a portion of another. Because a carrier's Base Period Revenue and interstate revenue requirement are study-area-specific, as are a carrier's capped switched access rates, combining two study areas requires a decision about how best to combine two different Base Period Revenues and interstate revenue requirements, and—when the study areas do not have the same capped rates—a waiver of the Commission's rules to establish the proper rate levels.

34. Since the Eligible Recovery rules have taken effect, several rate-of-return LECs have partially or fully merged study areas or acquired new study areas. Because the intercarrier compensation and CAF ICC rules adopted in the *USF/ICC Transformation Order* do not contemplate study area changes, these carriers have had to file petitions for waiver of portions of § 51.917 of the Commission's rules to reset the applicable Base Period Revenue associated with the study areas they have merged or acquired. In this line of waiver orders, the Bureau has permitted carriers to add together the relevant interstate revenues from FY 2011 of the merging study areas and the 2011–2012 interstate revenue requirement of the merging study areas. This calculation then creates a combined Base Period

Revenue which serves as the baseline for calculating the Eligible Recovery of the company serving the combined study area going forward. To facilitate mergers for entities that participate in the National Exchange Carrier Association (NECA) traffic-sensitive tariff, the Bureau has granted waivers of § 51.909 of the Commission's rules to allow NECA to place the consolidated study area in the rate bands that most closely approximate the merged entities' cost characteristics. The rate for each rate band then becomes the rate cap for the corresponding rate element in the merged study area.

35. In the *Administrative NPRM,* the Commission observed that the waiver process imposes costs and administrative burdens on rate-of-return LECs and, in some cases, may delay the closing of transactions. The Commission determined that rule revisions reflecting the pattern of outcomes in prior waiver orders would reduce these costs and administrative burdens by eliminating the need for carriers to obtain individual waivers when certain conditions apply. No party disputed these conclusions or identified any issues with the proposed rule revisions. In fact, the only comments addressing these proposals were filed by NECA, which agreed that the proposed rule changes would ease administrative burdens and provide carriers with predictability when considering mergers and/or acquisitions.

36. The Commission concludes that adopting the proposed rules will reduce regulatory costs and burdens, avoid potential delay, and allow carriers to assess the effects of a proposed transaction more accurately. For these reasons, the Commission adopts the rule revisions proposed in the *Administrative NPRM* and amends the intercarrier compensation rules in §§ 51.917 and 51.909 to address study area changes resulting from transactions involving rate-of-return carriers.

37. *Base Period Revenue calculation.* The Commission revises § 51.917 to provide guidance on calculating Base Period Revenues for rate-of-return study areas affected by a transaction, thereby permitting rate-of-return carriers to adjust their Base Period Revenues without the need for a waiver. Specifically, the Commission revises § 51.917 of its rules to provide that when two or more entire rate-of-return study areas are merged, the LEC shall combine the Base Period Revenue and interstate revenue requirements of the merging study areas for purposes of calculating Eligible Recovery. This approach is supported by NECA and consistent with the approach the Commission has taken previously in addressing transactions where study areas have merged. In the case of a partial study area change, the revised rules provide that rate-of-return LECs shall allocate the Base Period Revenue and interstate revenue requirement levels of the partial study area based on the proportion of access lines acquired compared to the total access lines in the pre-merger study area of the remaining entity.

38. *Setting rate caps.* The Commission revises § 51.909 to establish procedures for setting new rate caps for merging rate-of-return LECs and adopt a streamlined waiver process if the rates for the new combined study area would result in the new entity's CAF ICC support exceeding a certain threshold. Specifically, for carriers that file their own tariffs, the new rate cap for each rate element shall be the weighted average of the preexisting rates in each of the affected study areas. This approach is consistent with precedent and there was no opposition in the record to this logical and straightforward approach to establishing new rate caps for merging rate-of-return LECs that do not participate in NECA tariffs.

39. For merging rate-of-return LECs that participate in the NECA traffic-sensitive tariff and that have to establish a single switched access rate for a rate element, the revised rules provide that the new consolidated rate, as determined by NECA pursuant to the rate bands in its traffic-sensitive tariff, shall be the new rate cap if the merged entity's CAF ICC support will not increase as a result of the merger by more than two percent above the amount received by the merging entities prior to the transaction, using the demand and rate data for the preceding calendar year. In prior orders, the Bureau allowed NECA to place the consolidated study area in the rate bands that most closely approximated the merged entities' cost characteristics and NECA worked cooperatively with the Bureau to ensure that the most accurate rate bands are used for the merged entities. Under this approach, the rate for each rate band will become the rate cap for the corresponding rate element in the merged study area. The Commission expects that NECA will continue to evaluate the circumstances of each transaction, select the appropriate rate bands, and coordinate with the Bureau as appropriate.

40. The Commission proposed a two-percent threshold based on recently submitted petitions for waiver, which predicted increases between zero and two percent to CAF ICC as a result of the waiver. No party objected to this particular threshold or suggested an alternative one and increases in CAF ICC support of two percent or less will not materially impact the CAF ICC fund. Thus, the Commission now adopts the proposed two-percent threshold for carriers participating in the NECA traffic-sensitive tariff and eliminates the need for a waiver in circumstances where the CAF ICC increase is at or below two percent.

41. *Streamlined waiver process.* The *Administrative NPRM* also proposed revised rules that would streamline the waiver process for NECA tariff participants if the impact of rate banding exceeds the two-percent threshold. In such circumstances, the revised rules require carriers to file a petition for waiver specifying the impact of the merger, acquisition, or consolidation on the new entity's rates and CAF ICC support. Any petition for waiver should include information such as: (1) a description of the merging study areas, or portions of study areas involved; (2) the intrastate and interstate switched access demand for each rate element; (3) the relevant pre- and post-merger intrastate and interstate switched access rates for the study areas involved, as proposed; (4) the relevant pre-and post-merger intrastate and interstate switched access revenues, including the effects of interstate switched access revenue pooling, for the study areas involved; (5) the effect on CAF ICC resulting from the merger; and (6) a brief statement of the public interest benefits of the merger. The petition must be submitted for consideration via the Electronic Comment Filing System and a courtesy copy must be emailed to the Chief, Pricing Policy Division, Wireline Competition Bureau.

42. Under the new streamlined process, once the petition for waiver is filed, the Bureau will release a public notice announcing receipt of the waiver petition and establishing a 30-day comment period with an additional 15-day period for replies. If there is no opposition to the petition, the waiver will be deemed granted on the 60th day after the release of the public notice, unless the Bureau or the Commission acts to prevent the ''automatic'' grant. If an opposition is filed, the petition will no longer be eligible for the streamlined grant process and will instead be subject to the Commission's rules for waiver petitions generally. Because no party opposes this proposal or suggested changes to the proposed process or waiver requirements, the Commission adopts this streamlined process and delegates to the Bureau the authority to

review, analyze, and approve these petitions for waiver.

43. For the reasons specified in the *Administrative NPRM,* the Commission amends § 54.902 of its rules—which governs the amount of CAF Broadband Loop Support (BLS) a rate-of-return carrier receives when it acquires exchanges from another incumbent LEC—to better reflect the current state of the high-cost program. Currently, § 54.902(a) describes how CAF BLS support is calculated when a rate-of-return carrier acquires exchanges from another rate-of-return carrier, while § 54.902(b) specifies that in situations where a rate-of-return carrier acquires exchanges from a price cap carrier, the acquired exchanges remain subject to the support amounts and obligations established for frozen and model-based support. The Commission modifies § 54.902(a) to provide that only transferred exchanges that are already eligible for CAF BLS would be eligible for CAF BLS after their transfers. The Commission further modifies § 54.902(b) to provide that any acquired exchanges subject to § 54.902(b) continue to be subject to the support obligations in place at the time that the exchange is acquired, including obligations associated with frozen and auction-based support. As explained in the *Administrative NPRM,* these modifications are consistent generally with the rules as originally adopted, when all rate-of-return carriers were subject to the Interstate Common Line Support mechanism (which was renamed CAF BLS when modernized by the Commission in 2016), and consider changes to the high-cost program after the current rule went into effect: specifically, the creation of a voluntary pathway for rate-of-return carriers to select model-based support and the introduction of auction mechanisms permitting rate-of-return carriers to acquire exchanges from carriers that are not subject to rate-or-return or price cap regulation.

44. The Commission modifies the study area boundary process to require waivers for all study area boundary changes. The Commission finds that the original purpose of the study area boundary freeze—to prevent incumbent LECs from establishing separate study areas made up of only high-cost exchanges to maximize their receipt of high-cost universal service support—is best served by providing the Wireline Competition Bureau (WCB) with the opportunity to review such changes. By requiring waivers for all study area boundary changes, the Commission eliminates the exceptions adopted in 1996 by the then Common Carrier Bureau (now the WCB). Requiring all changes in study area boundaries to be reviewed by the Bureau will ensure that any proposed changes are not approved until the effects on the Fund are taken into account.

45. Since the exceptions to the study area boundary waiver requirement were adopted in 1996, the Commission has substantially reformed how universal service support is awarded. Incumbent LECs now receive support in different ways, including model-based support and auction support, in addition to traditional rate-of-return regulation (legacy support). Under the Commission's current rules, when a carrier that owns multiple study areas within a state wants to merge these commonly-owned study areas, the carrier is not required to petition the Commission. However, allowing carriers to merge study areas that receive support under different mechanisms creates opportunities for carriers to manipulate the Commission's support. For example, if a carrier seeks to merge two study areas in a state, one of which receives legacy rate-of-return support and another that receives model-based support, it would be difficult for the Commission to determine which lines in the new study area are entitled to rate-of-return support, which typically increases as the number of lines increases. Similarly, such a merger could create confusion regarding tracking carrier mandatory build-out obligations by changing the areas in which they must deploy broadband. For example, an A–CAM carrier receives a fixed amount of support in exchange for deploying broadband to a specific number of locations based on costs as determined by a model. If the A–CAM carrier merges its study area with a legacy rate-of-return study area in the same state owned by the same carrier, it would then be harder to track the deployment obligations under each program.

46. In addition, allowing carriers to add unserved areas to their study areas, even if those areas are not within an existing study area, could undermine the Commission's goal of distributing universal service support in the most efficient manner possible. In furtherance of this objective, the Commission has encouraged the transition to model-based support and auction-awarded support over traditional rate-of-return regulation. If rate-of-return carriers can extend their existing study area into unserved areas, this could result in the use of legacy support in additional areas when such areas could be served with broadband more efficiently using model-based or auction-based support.

47. The Nebraska Public Service Commission, the only party commenting on this issue, supports a streamlined mechanism for study area boundary changes, and suggests that any study area changes that have been previously approved by a state should be eligible for the streamlined review process. The Commission notes that it already has adopted a streamlined process to address all study area waiver petitions in the 2011 *USF/ICC Transformation Order,* and this streamlined process would apply to the waiver applications required here. The process takes into consideration whether the state commission having regulatory authority over the transferred exchanges does not object to the transfer, and whether the transfer is in the public interest. Evaluation of the public interest benefits of a proposed study area waiver include: (1) the number of lines at issue; (2) the projected universal service fund cost per line; and (3) whether such a grant would result in consolidation of study areas that facilitates reductions in cost by taking advantage of the economies of scale, *i.e.,* reduction in cost per line due to the increased number of lines. Under the streamlined process, once a carrier submits a petition the Bureau will issue a public notice seeking comment and noting whether the waiver is appropriate for streamlined treatment. Absent any further action by the Bureau, if the waiver is subject to streamlined treatment, it is granted on the 60th day after the reply comment due date. Alternatively, if the petition requires further analysis and review, the public notice will state that the petition is not suitable for streamlined treatment.

48. Requiring waivers for all study area boundary changes will help to avoid the issues created by merging study areas receiving different types of support or the expanded use of less efficient support methodologies. Requiring changes in study area boundaries to be reviewed by the Bureau will ensure that any proposed changes are not approved until the effects on the Fund are taken into account. Because the Commission has already established a streamlined process for such waivers, those requests that do not present any support or other concerns can be swiftly granted, thereby minimizing the burden on those carriers proposing mergers that promote efficiency and are clearly in the public interest.

49. As proposed in the *Administrative NPRM,* the Commission eliminates optional quarterly line count reporting for CAF BLS support recipients, finding that the mandatory annual line count

reporting set forth in §§ 54.313(h)(5) and 54.903(a)(1) of its rules suffices for the purposes of setting per line caps. No commenter filed comments on this proposal or the Commission's alternative proposal to update the schedule to file optional quarterly line counts to better align with the deadline for mandatory annual line count filings.

50. The optional quarterly reporting deadlines, falling on September 30th, December 31st, and March 31st, pertain to line counts as of six months prior to the filing deadline. The Commission notes that the December 31st optional quarterly line count update is due on the same day as the mandatory annual line count report for the prior reporting year, making this optional quarterly filing obsolete. All other quarterly line count reports have a six-month lag time, *i.e.,* each quarterly report reports line counts as of six months earlier. These optional quarterly line count filings also have limited utility. While USAC uses these quarterly line count updates to administer the monthly per-line cap on high-cost universal service support each quarter, only a very limited number of carriers have filed these updates in recent years, many of which are not subject to the per-line cap. USAC also uses quarterly line count data to determine preliminary (CAF BLS) amounts for a carrier that has acquired exchanges from another CAF BLS support recipient, but those amounts are ultimately subject to a true-up based on the acquiring carrier's actual cost and revenue data for their exchange (including the acquired exchange). Because the Commission can generally rely on the mandatory annual line counts due on March 31st to monitor line counts with minimum impact on reporting carriers and with minimum limitation on accuracy, it concludes that eliminating the optional quarterly line count filings is a more efficient modification than merely updating the filing schedule for these filings. Accordingly, the Commission eliminates these optional quarterly line count filings and modifies all related rules regarding these quarterly line counts.

51. The Commission revises § 54.205 of its rules to require an ETC designated by a state authority and seeking to relinquish its ETC designation to also provide advance notice to the Commission. The Commission sought comment on this proposal, which was supported by NTCA. As per this proposal, the Commission will also require the former ETC to notify it of the state's decision to permit or deny such relinquishment by submitting the relevant state order or other document issued by the state within 10 days of such issuance in the Electronic Comment Filing System, WC Docket No. 09–197. The Commission will require these filings regardless of whether the ETC is currently receiving Federal support, consistent with long standing precedent that states that obligations run with the ETC designation. The Commission's decision to require notice of relinquishment will help deter waste, fraud, and abuse by enabling swift discontinuance of support payments to non-ETCs, and, where applicable, allow the Commission to initiate default and potentially enforcement proceedings where it becomes clear that the support recipient has failed to fulfill its obligations. The Commission notes that these changes are applicable to all ETCs, including Lifeline-only ETCs. The Commission makes these modifications pursuant to authority granted under section 254 and as reasonably ancillary thereto. These changes will apply to all ETCs submitting requests for relinquishment after the effective date of these rule changes.

52. The Commission adopts several minor changes to its rules to correct inaccuracies associated with subsequent rule changes. Specifically, the Commission makes the following corrections:

- Section 54.314(d)(2) of the Commission's rules cross references § 54.313(a)(8). Section 54.313 was revised and renumbered, and § 54.313(a)(8) became § 54.313(a)(4), while § 54.313(a)(8) was eliminated. Accordingly, the Commission takes this opportunity to revise § 54.314(d)(2) to reference § 54.313(a)(4) rather than § 54.313(a)(8).
- Section 54.315(c)(4) of the Commission's rules currently indicates that the failure of CAF Phase II auction support recipients to meet service milestones will trigger reporting obligations and support withholding consistent with § 54.320(c) of the Commission's rules. This rule section should instead cross reference § 54.320(d).
- Similarly, § 54.1508(e)(1) of the Commission's rules also includes an incorrect cross reference. Specifically, when the section references milestones, it should cross reference § 54.320(d) instead of § 54.320(c).
- Subpart K of part 54 of title 47 is titled ''Interstate Common Line Support Mechanism for Rate-of-Return Carriers.'' In 2016, the Commission reformed this mechanism to provide support for stand-alone broadband, now known as CAF BLS. Consistent with this reform, the Commission retitles subpart K to read ''Connect America Fund Broadband Loop Support for Rate-of-Return Carriers.''
- Similarly, §§ 54.701(c)(1)(iii) and 54.705(c) of the Commission's rules describe the high-cost support mechanisms to include ''interstate access universal service support mechanism for price cap carriers described in subpart J of this part, and the interstate common line support mechanism for rate-of-return carriers described in subpart K of this part.'' The Commission deleted subpart J of part 54 to reflect its decision in the *USF/ICC Transformation Order* to eliminate the Interstate Access Support mechanism as a stand-alone support mechanism. In 2016, the Commission replaced the interstate common line support mechanism. In subsequent years, the Commission also created several new high-cost support mechanisms for rate-of-return and price-cap carriers. Accordingly, the Commission revises §§ 54.701(c)(1)(iii) and 54.705(c) to remove the references to ''interstate access universal service support mechanism for price cap carriers described in subpart J of this part,'' and ''interstate common line support mechanism.'' The Commission adds to these sections a reference to the high-cost support mechanisms described in subparts J, K, M, and O of the part, and the low-income support mechanisms described in subpart E of the part.

53. GTA has submitted proposals as part of its comments in this proceeding to apply the newly adopted Alaska rate benchmarks as suitable proxy for all insular territories in the United States. This proposal is not sufficiently related to those proposals raised in the *Administrative NPRM* to provide the requisite notice and comment periods for rulemakings as specified in the Administrative Procedure Act. Accordingly, the Commission declines to address them as part of the Order. These issues would need to be raised in a petition for rulemaking. The Commission does note that in its comments in this proceeding, GTA did not provide sufficient arguments or evidence for it to evaluate the reasonableness of the proposal, so the Commission would expect any such petition to include substantial additional information.

II. Procedural Matters

A. Paperwork Reduction Act

54. The Order contains new and modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget

(OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new and modified information collection requirements contained in this proceeding. In addition, the Commission notes that, pursuant to the Small Business Paperwork Relief Act of 2002, it previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. The Commission describes impacts that might affect small businesses, which includes most businesses with fewer than 25 employees in this document.

55. *Congressional Review Act.* The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, OMB, concurs, that this rule is ''non-major'' under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of the Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

56. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Administrative NPRM* released in May of 2022. The Commission sought written public comment on the proposals in the *Administrative NPRM,* including comment on the IRFA. No comments were filed addressing the IRFA. This Final Regulatory Flexibility Analysis conforms to the RFA.

57. In the Order, the Commission adopts several changes to its rules that will improve the administration of the high-cost program to enhance its efficiency and efficacy, better safeguard USF, and streamline annual reporting and certification requirements for high-cost support recipients. First, the Commission adopts its proposal to streamline the process for submitting annual high-cost information and certifications by requiring that such filings be made only with the USAC, rather than with both USAC and the Commission's OSEC. Second, the Commission similarly adopts its proposal to require states that desire ETCs to receive high-cost support and ETCs not subject to state jurisdiction to file annual reports with USAC only. Third, the Commission adopts its proposal to more closely align support reductions with an ETC's failure to certify locations by the deadlines established in its rules. Fourth, the Commission modifies the reporting requirements for performance testing to require all high-cost support recipients serving fixed locations to report and certify performance testing results on a quarterly basis, rather than annually. Fifth, the Commission retains annual financial reporting for privately held rate-of-return carriers that receive A–CAM support or Alaska Plan support. Sixth, the Commission adopts its proposal to modify its rules to create a consistent one-time grace period for all compliance filings with grace periods to ''within four business days.'' Seventh, the Commission modifies its rules to adopt uniform deployment, certification, and location reporting deadlines for all CAF Phase II auction support recipients. Eighth, the Commission declines to amend § 54.316(a) of its rules to require ETCs receiving high-cost support and subject to defined deployment obligations to report the maximum speeds offered, advertised, or delivered to customers. Ninth, the Commission adopts its proposal to amend § 54.316(a)(1) to more accurately reflect the deployed locations reporting obligations of support recipients. Tenth, the Commission modifies its voice and broadband rate certification rules to clarify the reporting period. The Commission also amends § 54.316(a) to clarify that it will permit high-cost support recipients to report and certify late-reported locations in future annual deployment reports and to count these locations toward their defined deployment obligations.

58. In addition, the Order amends the Commission's rules to provide a simpler process for rate-of-return LECs seeking to merge, consolidate, or acquire one or more rate-of-return study areas to calculate the new entity's ARC, CAFF ICC support, and reciprocal compensation and switched access rate caps. The Commission amends § 54.902 of its rules to better reflect the current state of the high-cost program. The Commission modifies the study area boundary process to require waivers for all study area boundary changes. The Order also eliminates optional quarterly line count reporting for CAF BLS support recipients and revises § 54.205 of the Commission's rules to require an ETC designated by a state authority and seeking to relinquish its ETC designation to provide advance notice to the Commission.

59. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small-business concern'' under the Small Business Act. A ''small-business concern'' is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

60. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* The Commission's actions, over time, may affect small entities that are not easily categorized at present. The Commission therefore describes, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's, Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 33.2 million businesses.

61. Next, the type of small entity described as a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' The Internal Revenue Service (IRS) uses a revenue benchmark of $50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax year 2020, there were approximately 447,689 small exempt organizations in the U.S. reporting revenues of $50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

62. Finally, the small entity described as a ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' U.S. Census Bureau data from the 2017 Census of Governments indicate there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number, there were 36,931 general purpose governments (county, municipal, and town or township) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts with enrollment populations of less than 50,000. Accordingly, based on the 2017 U.S. Census of Governments data, the Commission estimates that at least

48,971 entities fall into the category of ''small governmental jurisdictions.''

63. Small entities potentially affected by the rules herein include Wired Telecommunications Carriers, LECs, Incumbent LECs, Competitive LECs, Interexchange Carriers (IXCs), Local Resellers, Toll Resellers, Other Toll Carriers, Prepaid Calling Card Providers, Wireless Telecommunications Carriers (except Satellite), Cable and Other Subscription Programming, Cable Companies and Systems (Rate Regulation), Cable System Operators (Telecom Act Standard), All Other Telecommunications, Wired Broadband Internet Access Service Providers (Wired ISPs), Wireless Broadband Internet Access Service Providers (Wireless ISPs or WISPs), Internet Service Providers (Non-Broadband), All Other Information Services.

64. In the Order, the Commission adopts measures to improve the management, administration, and oversight of the high-cost program that may impact small entities, including: streamlining reporting and certification requirements; improving review of mergers between rate-of-return local exchange carriers; clarifying support for exchanges acquired by a CAF BLS recipient; establishing a streamlined process to merge jointly-owned study areas; improving the process to relinquish ETC status, and improving the Commission's audit program.

65. The Commission revises § 54.313(i) of its rules to streamline the process for submitting annual high-cost information and certifications by requiring that such filings be made only with the USAC which administers the program, rather than both USAC and the Commission's OSEC. The Commission similarly revises § 54.314 of its rules to require that high-cost support recipients file annual reports with USAC only. Additionally, the Commission more closely aligns support reductions with an ETC's failure to certify locations by the deadlines established in the Commission's rules. The Commission also modifies the reporting requirements for performance testing to apply to all high-cost support recipients serving fixed locations, not just those carriers that are not in compliance with speed and latency requirements. These carriers will be required to report and certify performance testing results on a quarterly basis instead of annually, and the Commission will allow for an additional week to file the report. Further, the Commission modifies its rules to create a consistent one-time grace period for all compliance filings to ''within four business days.'' The Commission updates its rules to adopt uniform deployment, certification, and location reporting deadlines for all CAF Phase II auction support recipients (including recipients of support allocated through the New York's New NY Broadband program). Section 54.316(a)(1) of the Commission's rules is amended to more accurately reflect the reporting obligations of support recipients in reporting deployed locations. The Commission's voice rate certification rule is updated to require carriers submitting an annual FCC Form 481 to certify compliance with the annual voice and broadband benchmarks adopted for the preceding calendar year ending the last day of December rather than those benchmarks applicable to the year that the report is filed. The Commission modifies and amends its rules to permit high-cost support recipients that have deployed locations in years prior to the annual reporting year to submit these locations (late-reported locations) and to count these locations toward their defined deployment obligations.

66. The Commission amends its rules to provide a simpler process for rate-of-return LECs seeking to merge, consolidate, or acquire one or more rate-of-return study areas to calculate the new entity's ARC, CAF ICC support, and reciprocal compensation and switched access rate caps. Section 51.917 is modified to provide guidance on calculating Base Period Revenues for rate-of-return study areas affected by a transaction, thereby permitting rate-of-return carriers to adjust their Base Period Revenues without the need for a waiver. Specifically, the Commission revises § 51.917 of its rules to provide that when two or more entire rate-of-return study areas are merged, the LEC shall combine the Base Period Revenue and interstate revenue requirements of the merging study areas for purposes of calculating Eligible Recovery. The Commission modifies § 51.909 to establish procedures for setting new rate caps for merging rate-of-return LECs and adopt a streamlined waiver process if the rates for the new combined study area would result in the new entity's CAF ICC support exceeding a certain threshold. Specifically, for carriers that file their own tariffs, the new rate cap for each rate element shall be the weighted average of the preexisting rates in each of the affected study areas. Revising the waiver process will reduce costs and administrative burdens by eliminating the need for carriers, including small entities, to obtain individual waivers when certain conditions apply.

67. The Commission modifies § 54.902(a) to limit eligibility for CAF BLS support to those transactions where the acquiring carrier would only be eligible to receive CAF BLS support for exchanges acquired from existing CAF BLS recipients, and revises § 54.902(b) to include any model-based, auction-based, or frozen support. The Commission updates the study area boundary process to require waivers for all study area boundary changes. The Commission eliminates optional quarterly line count reporting for CAF BLS support recipients, finding that the mandatory annual line count reporting set forth in §§ 54.313(h)(5) and 54.903(a)(1) of the Commission's rules suffices for the purposes of setting per line caps. The Commission revises § 54.205 of the Commission's rules to require an ETC designated by a state authority and seeking to relinquish its ETC designation to also provide advance notice to the Commission. In addition, the Commission requires former ETCs designated by a state authority that have relinquished their designation to provide notice of such relinquishment within 10 days of the effective date of this rule modification. The Commission adopts several minor changes to its rules to correct inaccuracies associated with subsequent rule changes.

68. The Commission modifies § 54.902(a) to limit eligibility for CAF BLS support to those transactions where the acquiring carrier would only be eligible to receive CAF BLS support for exchanges acquired from existing CAF BLS recipients, and revise § 54.902(b) to include any model-based, auction-based, or frozen support. The Commission updates the study area boundary process to require waivers for all study area boundary changes. The Commission eliminates optional quarterly line count reporting for CAF BLS support recipients, finding that the mandatory annual line count reporting set forth in §§ 54.313(h)(5) and 54.903(a)(1) of its rules suffices for the purposes of setting per line caps. The Commission revises § 54.205 of its rules to require an ETC designated by a state authority and seeking to relinquish its ETC designation to also provide advance notice to the Commission. In addition, the Commission requires former ETCs designated by a state authority that have relinquished their designation to provide notice of such relinquishment within 10 days of the effective date of this rule modification. The Commission adopts several minor changes to its rules to correct inaccuracies associated with subsequent rule changes.

69. The record does not provide sufficient information to allow the

Commission to determine whether small entities will be required to hire professionals to comply with its decisions. The Commission anticipates the approaches it has taken to implement the requirements will have minimal cost implications because it expects that much of the required information is already collected to ensure compliance with the terms and conditions of support. Further, the changes the Commission makes to streamline waiver processes and eliminate duplicative filing requirements may reduce administrative costs and compliance requirements for small entities that may have smaller staff and fewer resources.

70. The RFA requires an agency to provide, ''a description of the steps the agency has taken to minimize the significant economic impact on small entities . . . including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.''

71. In reaching its final conclusions and through its actions in this proceeding, the Commission has considered the economic impact of, and alternatives to, proposals that may affect small entities. The rules that the Commission adopts in the Order will benefit small and other entities by improving and streamlining annual reporting and certification, as well as by eliminating ambiguity and reducing administrative burdens. Additionally, the Commission adopts consistent grace periods of four business days which will eliminate confusion for all entities from grace periods falling on a weekend or holiday. The Commission also eliminates the need for rate-of-return LECs, most of which are small entities, that are involved in a merger, consolidation, or acquisition with another rate-of-return carrier to obtain a waiver of certain intercarrier compensation rules. For carriers that do not satisfy the criteria identified for transactions when waiver is not required, the Commission adopts a streamlined CAF ICC merger approval process. Specifically, the Commission modifies § 54.314 to require the submission of annual certifications of its rules with USAC only, instead of USAC and the Commission. Revisions to § 54.316(a) clarify high-cost support recipients obligations for late-reported locations, addressing commenters concerns by modifying the support reduction and capping the duration multiplier if timely filing is made by the next deadline. The Commission, however, declines to amend § 54.316(a) to require ETCs receiving high-cost support and subject to defined deployment obligations to report the maximum speeds offered or delivered to customers because similar information is collected through fulfillment of their BDC responsibilities.

72. To the extent the Commission retains certification and reporting requirements, it finds that the importance of monitoring the use of the public's funds outweighs the burden of filing the required information on all entities, including small entities, particularly because much of the information that the Commission requires they report is information it expects they will already be collecting to ensure they comply with the terms and conditions of support and they will be able to submit their location data on a rolling basis to help minimize the burden of uploading a large number of locations at once. For example, the Commission declines proposals to relieve privately held rate-of-return carriers that receive A–CAM support or Alaska Plan support of the requirement to file annually a report of the company's financial conditions and operations, because the public interest benefits evaluating the efficacy outweigh the burdens. The Commission considered proposals that sought to apply the newly adopted Alaska rate benchmarks as suitable proxy for all insular territories in the United States, but declines to address them in the Order because they are not sufficiently related to the proposals in the *Administrative NPRM,* and recommend that commenters submit a petition for rulemaking to address this issue.

III. Ordering Clauses

73. Accordingly, *it is ordered,* pursuant to the authority contained in sections 4(i), 214, 218–220, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 214, 218–220, 254, 303(r), and 403, and §§ 1.1 and 1.425 of the Commission's rules, 47 CFR 1.1 and 1.425 the Order *is adopted.* The Order *shall be effective* thirty days after publication in the **Federal Register**, except for those portions containing information collection requirements in §§ 36.4, 54.205, 54.313(a)(2), (3), and (6), (i), and (j), 54.314(a) through (d), 54.316(a) through (d), 54.903(a)(2), and 54.1306 of the Commission's rules that have not been approved by OMB.

74. *It is further ordered* that parts 36, 51, and 54 of the Commission's rules *are amended* as set forth in this document, and that any such rule amendments that contain new or modified information collection requirements that require approval by the OMB under the PRA *shall be effective* after announcement in the **Federal Register** or OMB approval of the Commission's rules, and on the effective date announced therein.

List of Subjects

47 CFR Part 36

Communications common carriers, Reporting and recordkeeping requirements, Telecommunications, Telephone, Uniform System of Accounts.

47 CFR Part 51

Communications, Communications common carriers, Telecommunications, Telephone.

47 CFR Part 54

Communications common carriers, Health facilities, Infants and children, Internet, Libraries, Puerto Rico, Reporting and recordkeeping requirements, Schools, Telecommunications, Telephone, Virgin Islands.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 36, 51, and 54 as follows:

PART 36—JURISDICTIONAL SEPARATIONS PROCEDURES; STANDARD PROCEDURES FOR SEPARATING TELECOMMUNICATIONS PROPERTY COSTS, REVENUES, EXPENSES, TAXES AND RESERVES FOR TELECOMMUNICATIONS COMPANIES

■ 1. The authority citation for part 36 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 154(i) and (j), 201, 205, 220, 221(c), 254, 303(r), 403, 410, and 1302 unless otherwise noted.

■ 2. Delayed indefinitely, amend § 36.4 by adding paragraph (c) to read as follows:

§ 36.4 Streamlining procedures for processing petitions for waiver of study area boundaries.

* * * * *

(c) *Petitions for waiver required.* Effective as of [30 DAYS AFTER THE EFFECTIVE DATE OF THIS PARAGRAPH (c)], local exchange carriers seeking a change in study area boundaries must file a study area petition consistent with the procedures

set out in paragraphs (a) and (b) of this section notwithstanding any prior exemption from such waiver requests including, but not limited to, when a company is combining previously unserved territory with one of its study areas or a holding company is consolidating existing study areas within the same state. The Wireline Competition Bureau or the Office of Economics and Analytics are permitted to accept study area boundary corrections without a waiver.

PART 51—INTERCONNECTION

■ 3. The authority citation for part 51 continues to read as follows:

Authority: 47 U.S.C. 151–55, 201–05, 207–09, 218, 225–27, 251–52, 271, 332 unless otherwise noted.

■ 4. Amend § 51.909 by adding paragraph (a)(7) to read as follows:

§ 51.909 Transition of rate-of-return carrier access charges.

(a) * * *

(7) Rate-of-return carriers subject to § 51.917 that merge with, consolidate with, or acquire, other rate-of-return carriers shall establish new rate caps as follows:

(i) If the merged entity will file its own access tariff, the new rate cap for each rate element shall be the average of the preexisting rates of each study area weighted by the number of access lines in each study area; or

(ii) If the merged entity participates in the Association traffic-sensitive tariff and has to establish a single switched access rate for one or more rate elements, the new consolidated rate reflecting the cost characteristics of the merged entity, as determined by the Association, will serve as the new rate cap if the merged entity's Connect America Fund Intercarrier Compensation (CAF ICC) support will not be more than two percent higher than the combined amount received by the entities prior to merger, using rate and demand levels for the preceding calendar year. A merging entity that does not satisfy the requirement in this paragraph (a)(7)(ii) may file a streamlined waiver petition that will be subject to the following procedure:

(A) *Public notice and review period.* The Wireline Competition Bureau will issue a public notice seeking comment on a petition for waiver of the two-percent threshold established by this paragraph (a)(7)(ii).

(B) *Comment cycle.* Comments on petitions for waiver may be filed during the first 30 days following public notice, and reply comments may be filed during the first 45 days following public notice, unless the public notice specifies a different pleading cycle. All comments on petitions for waiver shall be filed electronically, and shall satisfy such other filing requirements as may be specified in the public notice.

(C) *Effectuating waiver grant.* A waiver petition filed pursuant to this paragraph (a)(7)(ii)(C) will be deemed granted 60 days after the release of the public notice seeking comment on the petition, unless opposed or the Commission acts to prevent the waiver from taking effect. The Association and the petitioner shall coordinate the timing of any tariff filing necessary to effectuate this change. The revised rate filed by the Association shall be the rate cap for purposes of applying paragraph (a) of this section.

* * * * *

■ 5. Amend § 51.917 by revising paragraph (c) to read as follows:

§ 51.917 Revenue recovery for Rate-of-Return Carriers.

* * * * *

(c) *Base Period Revenue*—(1) *Adjustment for Access Stimulation activity.* 2011 Rate-of-Return Carrier Base Period Revenue shall be adjusted to reflect the removal of any increases in revenue requirement or revenues resulting from Access Stimulation activity the Rate-of-Return Carrier engaged in during the relevant measuring period. A Rate-of-Return Carrier should make this adjustment for its initial July 1, 2012, tariff filing, but the adjustment may result from a subsequent Commission or court ruling.

(2) *Adjustment for merger, consolidation, or acquisition.* Rate-of-Return Carriers subject to this section that merge with, consolidate with, or acquire, other Rate-of-Return Carriers shall establish combined Base Period Revenue and interstate revenue requirement levels as follows:

(i) If the merger or acquisition is of two or more study areas, the Base Period Revenue and interstate revenue requirement levels of the study areas shall be added together to establish a new Base Period Revenue and interstate revenue requirement for the newly combined entity; or

(ii) If a portion of a study area is being acquired and merged into another study area, the Base Period Revenue and interstate revenue requirement levels of the partial study area shall be based on the proportion of access lines acquired compared to the total access lines in the pre-merger study area.

* * * * *

PART 54—UNIVERSAL SERVICE

■ 6. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 229, 254, 303(r), 403, 1004, 1302, 1601–1609, and 1752, unless otherwise noted.

■ 7. Delayed indefinitely, amend § 54.205 by revising paragraph (a) and adding paragraphs (c) and (d) to read as follows:

§ 54.205 Relinquishment of universal service.

(a) A state commission shall permit an eligible telecommunications carrier to relinquish its designation as such a carrier in any area served by more than one eligible telecommunications carrier. An eligible telecommunications carrier that seeks to relinquish its eligible telecommunications carrier designation for an area served by more than one eligible telecommunications carrier shall give notice to the state commission and to the Federal Communications Commission of such intention to relinquish. The notice to the Federal Communications Commission shall be filed with the Office of the Secretary of the Commission clearly referencing WC Docket No. 09–197.

* * * * *

(c) Where a state authority permits an eligible telecommunications carrier to relinquish its designation, the former eligible telecommunications carrier must submit a copy of the state authority's order or other document permitting relinquishment to the Commission within 10 days of the state authority's decision.

(d) All notices to the Commission must be filed regardless of whether the eligible telecommunications carrier received or is receiving universal service support at the time of relinquishment.

■ 8. Amend § 54.305 by revising paragraph (d) to read as follows:

§ 54.305 Sale or transfer of exchanges.

* * * * *

(d) Transferred exchanges in study areas operated by rural telephone companies that are subject to the limitations on loop-related universal service support in paragraph (b) of this section may be eligible for a safety valve loop cost expense adjustment based on the difference between the rural incumbent local exchange carrier's index year expense adjustment and subsequent year loop cost expense adjustments for the acquired exchanges. Safety valve loop cost expense adjustments shall only be available to

rural incumbent local exchange carriers that, in the absence of restrictions on high-cost loop support in paragraph (b) of this section, would qualify for high-cost loop support for the acquired exchanges under § 54.1310.

(1) For carriers that buy or acquire telephone exchanges on or after January 10, 2005, from an unaffiliated carrier, the index year expense adjustment for the acquiring carrier's first year of operation shall equal the selling carrier's loop-related expense adjustment for the transferred exchanges for the 12-month period prior to the transfer of the exchanges. At the acquiring carrier's option, the first year of operation for the transferred exchanges, for purposes of calculating safety valve support, shall commence at the beginning of either the first calendar year or the next calendar quarter following the transfer of exchanges. For the first year of operation, a loop cost expense adjustment, using the costs of the acquired exchanges submitted in accordance with § 54.1305 shall be calculated pursuant to § 54.1310 and then compared to the index year expense adjustment. Safety valve support for the first period of operation will then be calculated pursuant to paragraph (d)(3) of this section. The index year expense adjustment for years after the first year of operation shall be determined using cost data for the first year of operation of the transferred exchanges. Such cost data for the first year of operation shall be calculated in accordance with §§ 54.1305 and 54.1310. For each year, ending on the same calendar quarter as the first year of operation, a loop cost expense adjustment, using the loop costs of the acquired exchanges, shall be submitted and calculated pursuant to §§ 54.1305 and 54.1310 and will be compared to the index year expense adjustment. Safety valve support for the second year of operation and thereafter will then be calculated pursuant to paragraph (d)(3) of this section.

(2) For carriers that bought or acquired exchanges from an unaffiliated carrier before January 10, 2005, and are not subject to the exception in paragraph (c) of this section, the index year expense adjustment for acquired exchange(s) shall be equal to the rural incumbent local exchange carrier's high-cost loop expense adjustment for the acquired exchanges calculated for the carrier's first year of operation of the acquired exchange(s). At the carrier's option, the first year of operation of the transferred exchanges shall commence at the beginning of either the first calendar year or the next calendar quarter following the transfer of exchanges. The index year expense adjustment shall be determined using cost data for the acquired exchange(s) submitted in accordance with § 54.1305 and shall be calculated in accordance with § 54.1310. For each subsequent year, ending on the same calendar quarter as the index year, a loop cost expense adjustment, using the costs of the acquired exchanges, will be calculated pursuant to § 54.1310 and will be compared to the index year expense adjustment. Safety valve support is calculated pursuant to paragraph (d)(3) of this section.

* * * * *

■ 9. Amend § 54.310 by revising paragraph (c) introductory text to read as follows:

§ 54.310 Connect America Fund for Price Cap Territories—Phase II.

* * * * *

(c) *Deployment obligation.* Recipients of Connect America Phase II model-based support must complete deployment to 40 percent of supported locations by December 31, 2017, to 60 percent of supported locations by December 31, 2018, to 80 percent of supported locations by December 31, 2019, and to 100 percent of supported locations by December 31, 2020. Recipients of Connect America Phase II support awarded through a competitive bidding process, including New York's New NY Broadband Program, must complete deployment to 40 percent of supported locations by December 31, 2022, to 60 percent of supported locations December 31, 2023, to 80 percent of supported locations by December 31, 2024, and to 100 percent of supported locations by December 31, 2025. Compliance shall be determined based on the total number of supported locations in a state.

* * * * *

■ 10. Delayed indefinitely, amend § 54.313 by:
■ a. Revising the section heading and paragraphs (a)(2), (3), and (6);
■ b. Removing the heading from paragraph (g);
■ c. Revising paragraph (i); and
■ d. Revising and republishing paragraph (j);

The revisions read as follows:

§ 54.313 Annual reporting requirements and quarterly performance reporting for high-cost recipients.

(a) * * *

(2) A certification that the pricing of the company's voice services during the prior calendar year is no more than two standard deviations above the applicable national average urban rate for voice service, as specified in the public notice issued by the Wireline Competition Bureau and the Office of Economics and Analytics;

(3) A certification that the pricing of a service that meets the Commission's broadband public interest obligations during the prior calendar year is no more than the applicable benchmark to be announced annually in a public notice issued by the Wireline Competition Bureau and the Office of Economics and Analytics, or is no more than the non-promotional price charged for a comparable fixed wireline service in urban areas in the states or U.S. Territories where the eligible telecommunications carrier receives support;

* * * * *

(6) The results of quarterly network performance tests pursuant to the methodology and in the format determined by the Wireline Competition Bureau, Wireless Telecommunications Bureau, and Office of Engineering and Technology must be submitted on the following dates per year:

(i) *By April 15th.* Filing and certification for network performance test results for first quarter testing.

(ii) *By July 15th.* Filing and certification for network performance test results for second quarter testing.

(iii) *By October 15th.* Filing and certification for network performance test results for third quarter testing.

(iv) *By January 15th.* Filing and certification for network performance test results for the previous fourth quarter testing.

* * * * *

(i) All reports pursuant to this section shall be filed with the Administrator.

(j)(1) Other than for certifications under paragraph (a)(6) of this section, in order for a recipient of high-cost support to continue to receive support for the following calendar year, or to retain its eligible telecommunications carrier designation, it must submit the annual reporting information required by this section annually by July 1 of each year. Eligible telecommunications carriers that file their reports after the July 1 deadline shall receive a reduction in support pursuant to the following schedule:

(i) An eligible telecommunications carrier that files after the July 1 deadline, but by July 8, will have its support reduced in an amount equivalent to seven days in support; and

(ii) An eligible telecommunications carrier that files on or after July 9 will have its support reduced on a pro-rata daily basis equivalent to the period of non-compliance, plus the minimum seven-day reduction.

(2) An eligible telecommunications carrier that submits the annual reporting information required by this section after July 1 but within 4 business days will not receive a reduction in support if the eligible telecommunications carrier and its holding company, operating companies, and affiliates as reported pursuant to paragraph (a)(4) of this section have not missed the July 1 deadline in any prior year.

(3) For certifications under paragraph (a)(6) of this section, in order for a recipient of high-cost support to continue to receive support amount for the following calendar year, or retain its eligible telecommunications carrier designation, it must submit information required under paragraph (a)(6) by the required dates set. Reductions in support for late filings shall be calculated after the deadline under paragraph (a)(6)(iv) of this section by adding the total days late for each quarter and dividing that number by four (days late). Eligible telecommunications carriers that file their reports after the quarterly filing deadline will not receive a grace period for late filings, and shall receive a reduction in support pursuant to the following schedule:

(i) An eligible telecommunications carrier that is one to seven days late, will have its support reduced in an amount equivalent to seven days in support; and

(ii) An eligible telecommunications carrier that is 8 days late or more will have its support reduced on a pro-rata basis equivalent to the number of days late plus the minimum seven-day reduction.

(4) Any support reductions resulting from a failure to timely make required filing pursuant to this section shall be applied in the month following the notice of support reduction to the eligible telecommunications carrier from the Administrator or as soon as feasible thereafter.

* * * * *

■ 11. Delayed indefinitely, revise and republish § 54.314 to read as follows:

§ 54.314 Certification of support for eligible telecommunications carriers.

(a) *Certification.* States that desire eligible telecommunications carriers to receive support pursuant to the high-cost program must file an annual certification with the Administrator stating that all federal high-cost support provided to such carriers within that State was used in the preceding calendar year and will be used in the coming calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. High-cost support shall only be provided to the extent that the State has filed the requisite certification pursuant to this section.

(b) *Carriers not subject to State jurisdiction.* An eligible telecommunications carrier not subject to the jurisdiction of a State that desires to receive support pursuant to the high-cost program must file an annual certification with the Administrator stating that all federal high-cost support provided to such carrier was used in the preceding calendar year and will be used in the coming calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. Support provided pursuant to the high-cost program shall only be provided to the extent that the carrier has filed the requisite certification pursuant to this section.

(c) *Certification format.* (1) A certification pursuant to this section may be filed in the form of a letter from the appropriate regulatory authority for the State, and must be filed with the Administrator of the high-cost universal mechanism, on or before the deadlines set forth in paragraph (d) of this section. If provided by the appropriate regulatory authority for the State, the annual certification must identify which carriers in the State are eligible to receive Federal support during the applicable 12-month period, and must certify that those carriers only used support during the preceding calendar year and will only use support in the coming calendar year for the provision, maintenance, and upgrading of facilities and services for which support is intended. A State may file a supplemental certification for carriers not subject to the State's annual certification.

(2) An eligible telecommunications carrier not subject to the jurisdiction of a State shall file a sworn affidavit executed by a corporate officer attesting that the carrier only used support during the preceding calendar year and will only use support in the coming calendar year for the provision, maintenance, and upgrading of facilities and services for which support is intended. The affidavit must be filed with the Administrator of the high-cost universal service support mechanism, on or before the deadlines set forth in paragraph (d) of this section.

(d) *Filing deadlines.* (1) In order for an eligible telecommunications carrier to receive Federal high-cost support, the State or the eligible telecommunications carrier, if not subject to the jurisdiction of a State, must file an annual certification, as described in paragraph (c) of this section, with the Administrator by October 1 of each year. If a State or eligible telecommunications carrier files the annual certification after the October 1 deadline, the carrier subject to the certification shall receive a reduction in its support pursuant to the following schedule:

(i) An eligible telecommunications carrier subject to certifications filed after the October 1 deadline, but by October 8, will have its support reduced in an amount equivalent to seven days in support.

(ii) An eligible telecommunications carrier subject to certifications filed on or after October 9 will have its support reduced on a pro-rata daily basis equivalent to the period of non-compliance, plus the minimum seven-day reduction.

(iii) Any support reductions resulting from a failure to timely make required filing pursuant to this section shall be applied in the month following the notice of support reduction to the eligible telecommunications carrier from the Administrator or as soon as feasible thereafter.

(2) If an eligible telecommunications carrier or state submits the annual certification required by this section after October 1 but within 4 business days, the eligible telecommunications carrier subject to the certification will not receive a reduction in support if the eligible telecommunications carrier and its holding company, operating companies, and affiliates as reported pursuant to § 54.313(a)(4) have not missed the October 1 deadline in any prior year.

■ 12. Amend § 54.315 by revising the first sentence of paragraph (c)(4)(i) to read as follows:

§ 54.315 Application process for Connect America Fund Phase Connect America Fund Phase II support distributed through competitive bidding.

* * * * *

(c) * * *

(4) * * *

(i) Failure by a Phase II auction support recipient to meet its service milestones as required by § 54.310 will trigger reporting obligations and the withholding of support as described in § 54.320(d). * * *

* * * * *

■ 13. Delayed indefinitely, amend § 54.316 by revising paragraph (a)(1), the introductory text of paragraph (b), and paragraphs (b)(4) and (7) and (c) and adding paragraph (d) to read as follows:

§ 54.316 Broadband deployment reporting and certification requirements for high-cost recipients.

(a) * * *

(1) Recipients of high-cost support with defined broadband deployment obligations pursuant to § 54.308(a) or (c) or § 54.310(c) shall provide to the Administrator information regarding the locations to which the eligible telecommunications carrier is offering broadband service in satisfaction of its public interest obligations, as defined in either § 54.308 or § 54.309.

* * * * *

(b) *Broadband deployment certifications.* ETCs that receive support to serve fixed locations shall have the following broadband deployment certification obligations:

* * * * *

(4) Recipients of Connect America Phase II auction support, including recipients of support made available through the New York's New NY Broadband Program, shall provide, no later than March 1, 2023, and on March 1 every year thereafter ending March 1, 2026, a certification that by the end of the prior calendar year, it was offering broadband meeting the requisite public interest obligations specified in § 54.309 to the required percentage of its supported locations in each state as set forth in § 54.310(c).

* * * * *

(7) Recipients of Uniendo a Puerto Rico Fund Stage 2 fixed and Connect USVI Fund fixed Stage 2 fixed support shall provide: no later than March 1 following each service milestone in § 54.1506, a certification that by the end of the prior support year, it was offering broadband meeting the requisite public interest obligations specified in § 54.1507 to the required percentage of its supported locations in Puerto Rico and the U.S. Virgin Islands as set forth in § 54.1506. The annual certification shall quantify the carrier's progress toward or, as applicable, completion of deployment in accordance with the resilience and redundancy commitments in its application and in accordance with the detailed network plan it submitted to the Wireline Competition Bureau.

(c) *Filing deadlines.* In order for a recipient of high-cost support to continue to receive support for the following calendar year, or retain its eligible telecommunications carrier designations, it must submit the annual reporting information by March 1 as described in paragraphs (a) and (b) of this section. ETCs that file their reports after the March 1 deadline shall receive a reduction in support pursuant to the following schedule:

(1) An ETC that certifies after the March 1 deadline, but by March 8, will have its support reduced in an amount equivalent to seven days in support.

(2) An ETC that certifies on or after March 9 will have its support reduced on a pro-rata daily basis equivalent to the period of non-compliance, plus the minimum seven-day reduction.

(3) An ETC that certifies the information required by this section within 4 business days of March 1 will not receive a reduction in support if the ETC and its holding company, operating companies, and affiliates as reported pursuant to § 54.313(a)(4) in their report due July 1 of the prior year, have not missed the deadline in any prior year.

(4) Any support reductions resulting from a failure to timely make required filing pursuant to this section shall be applied in the next month following the notice of support reduction to the eligible telecommunications carrier from the Administrator or as soon as feasible thereafter.

(d) *Reporting locations pursuant to paragraph (a)(1) of this section after the March 1st annual deadline.* (1) An ETC that did not report and certify specific locations by March 1 of the year following the year in which the locations were deployed (late-reported locations) may report and certify those locations in a future year for the purpose of counting those locations toward fulfillment of future defined deployment obligations and/or for curing any noncompliance with such obligations in accordance with the terms of § 54.320. To do so, the ETC must indicate that the late-reported locations are being filed for this purpose.

(2) An ETC filing late-reported locations will be subject to a reduction in support calculated by multiplying the following numbers:

(i) The per diem per location support received by the ETC, subject to a maximum per-day, per-location reduction of seven dollars.

(ii) The number of days between the March 1 deadline for the reporting year in which the late-reported locations were deployed and the date that the ETC reported, certified, and indicated that the location should be counted toward defined deployment obligations, subject to a 15 day limit if the late-reported locations are filed as of the next reporting deadline after the locations should have been filed and at 30 day limit if the late-reported locations are filed at any time thereafter (for each instance of late reporting).

(iii) The number of late-reported locations as a percentage of the total number of locations that the ETC filed for the reporting year in which the untimely filed location should have been reported.

(3) If an ETC has not reported any untimely locations previously, the ETC is not subject to the reduction in support specified in paragraph (d)(2) of this section for a number of untimely reported locations deployed in any single year constituting 5% or less of the ETC's reported locations for the relevant reporting year.

(4) If an ETC has not reported any late-reported locations previously and the ETC filed a timely annual report, the ETC may amend the annual filing to include additional locations within four business days of the reporting deadline without being subject to the reduction in support specified in paragraph (d)(2) of this section.

(5) The reduction in support for the filing of the late-reported locations shall be applied in the next month following the notice of support reduction to the eligible telecommunications carrier from the Administrator or as soon as feasible thereafter.

■ 14. Amend § 54.701 by revising paragraph (c)(1)(iii) to read as follows:

§ 54.701 Administrator of universal service support mechanisms.

* * * * *

(c) * * *

(1) * * *

(iii) The High Cost and Low Income Division, which shall perform duties and functions in connection with the high cost support mechanisms described in subparts J, K, M, and O of this part, and the low income support mechanisms described in subpart E of this part, under the direction of the High Cost and Low Income Committee of the Board, as set forth in § 54.705(c).

* * * * *

■ 15. Amend § 54.705 by revising paragraph (c) to read as follows:

§ 54.705 Committees of the Administrator's Board of Directors.

* * * * *

(c) *High Cost and Low Income Committee*—(1) *Committee functions.* The High Cost and Low Income Committee shall oversee the administration of the high cost and low income support mechanisms described in subparts J, K, M, O, and E of this part. The High Cost and Low Income Committee shall have the authority to make decisions concerning:

(i) How the Administrator projects demand for the high cost and low income support mechanisms;

(ii) Development of applications and associated instructions as needed for the

high cost and low income, support mechanisms;

(iii) Administration of the application process, including activities to ensure compliance with Federal Communications Commission rules and regulations;

(iv) Performance of audits of beneficiaries under the high cost and low income support mechanisms; and

(v) Development and implementation of other functions unique to the high cost and low income support mechanisms.

(2) [Reserved]

* * * * *

■ 16. Revise the heading for subpart K to read as follows:

Subpart K—Connect America Fund Broadband Loop Support for Rate-of-Return Carriers

■ 17. Amend § 54.902 by revising the introductory text of paragraph (a) and paragraph (b) to read as follows:

§ 54.902 Calculation of CAF BLS Support for transferred exchanges.

(a) In the event that a rate-of-return carrier receiving CAF BLS acquires exchanges from an entity that also receives CAF BLS, CAF BLS for the transferred exchanges shall be distributed as follows:

* * * * *

(b) In the event that a rate-of-return carrier receiving CAF BLS acquires exchanges from an entity receiving frozen support, model-based support, or auction-based support, absent further action by the Commission, the exchanges shall receive the same amount of support and be subject to the same public interest obligations as specified pursuant to the frozen, model-based, or auction-based program.

* * * * *

§ 54.903 [Amended]

■ 18. Delayed indefinitely, amend § 54.903 by removing and reserving paragraph (a)(2).

■ 19. Amend § 54.1301 by revising paragraph (b) to read as follows:

§ 54.1301 General.

* * * * *

(b) The expense adjustment will be computed on the basis of data for a preceding calendar year.

■ 20. Amend § 54.1302 by revising paragraph (a) to read as follows:

§ 54.1302 Calculation of the incumbent local exchange carrier portion of the nationwide loop cost expense adjustment for rate-of-return carriers.

(a) Beginning January 1, 2013, and each calendar year thereafter, the total annual amount of the incumbent local exchange carrier portion of the nationwide loop cost expense adjustment shall not exceed the amount for the immediately preceding calendar year, multiplied times one plus the Rural Growth Factor calculated pursuant to § 54.1303. Beginning January 1, 2021, and each calendar year thereafter, the base amount of the nationwide loop cost expense adjustment shall be the annualized amount of the final six months of the preceding calendar year. The total amount of the incumbent local exchange carrier portion of the nationwide loop cost expense adjustment for the first six months of the calendar year shall be the base amount divided by two and for the second six months of the calendar year shall be the base amount divided by two, multiplied times one plus the Rural Growth Factor calculated pursuant to § 54.1303.

* * * * *

■ 21. Amend § 54.1305 by revising paragraph (a) to read as follows:

§ 54.1305 Submission of information to the National Exchange Carrier Association (NECA).

(a) In order to allow determination of the study areas and wire centers that are entitled to an expense adjustment pursuant to § 54.1310, each incumbent local exchange carrier (LEC) must provide the National Exchange Carrier Association (NECA) (established pursuant to part 69 of this chapter) with the information listed for each study area in which such incumbent LEC operates, with the exception of the information listed in paragraph (h) of this section, which must be provided for each study area. This information is to be filed with NECA by July 31st of each year. Rural telephone companies that acquired exchanges subsequent to May 7, 1997, and incorporated those acquired exchanges into existing study areas shall separately provide the information required by paragraphs (b) through (i) of this section for both the acquired and existing exchanges.

* * * * *

§ 54.1306 [Removed and Reserved]

■ 22. Delayed indefinitely, remove and reserve § 54.1306.

■ 23. Amend § 54.1309 by revising paragraph (b) to read as follows:

§ 54.1309 National and study area average unseparated loop costs.

* * * * *

(b) *Study area average unseparated loop cost per working loop.* This is equal to the unseparated loop costs for the study area as calculated pursuant to § 54.1308(a) divided by the number of working loops reported in § 54.1305(i) for the study area.

* * * * *

§ 54.1310 [Amended]

■ 24. Amend § 54.1310 by removing and reserving paragraph (c).

■ 25. Amend § 54.1508 by revising the first sentence of paragraph (e)(1) to read as follows:

§ 54.1508 Letter of credit for stage 2 fixed support recipients.

* * * * *

(e) * * *

(1) Failure by a Uniendo a Puerto Rico Fund and the Connect USVI Fund Stage 2 fixed support recipient to meet its service milestones as required by § 54.1506 will trigger reporting obligations and the withholding of support as described in § 54.320(d). * * *

* * * * *

[FR Doc. 2024–06292 Filed 4–9–24; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 217

[Docket No. 240404–0097]

RIN 0648–BM48

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to U.S. Space Force Launches and Supporting Activities at Vandenberg Space Force Base, Vandenberg, California

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

ACTION: Final rule; notice of issuance of Letter of Authorization.

SUMMARY: NMFS, in response to the request of the U.S. Space Force (USSF), hereby issues regulations and a Letter of Authorization (LOA) to govern the unintentional taking of marine mammals incidental to launches and supporting activities at Vandenberg Space Force Base (VSFB) in Vandenberg, California, from April 2024 to April 2029. Missile launches conducted at VSFB, which comprise a portion of the activities, are considered military readiness activities under the Marine Mammal Protection Act (MMPA), as amended by the National Defense Authorization Act for Fiscal

Year 2004 (2004 NDAA). These regulations, which allow for the issuance of LOAs for the incidental take of marine mammals during the described activities and specified timeframes, prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat, as well as requirements pertaining to the monitoring and reporting of such taking.

DATES: Effective from April 10, 2024, through April 9, 2029.

FOR FURTHER INFORMATION CONTACT: Leah Davis, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Availability

A copy of USSF's Incidental Take Authorization (ITA) application, supporting documents, received public comments, and the proposed rule, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities.* In case of problems accessing these documents, please call the contact listed above (see **FOR FURTHER INFORMATION CONTACT**).

Purpose and Need for Regulatory Action

This final rule provides a framework under the authority of the MMPA (16 U.S.C. 1361 *et seq.*) for NMFS to authorize the take of marine mammals incidental to space vehicle (rocket) launches, missile launches, and aircraft operations at VSFB. NMFS received a request from USSF to incidentally take six species of marine mammals (with six managed stocks) by Level B harassment incidental to launch noise and sonic booms. No take by Level A harassment, mortality or serious injury is anticipated or authorized in this final rulemaking. Please see the *Legal Authority for the Final Action* section below for definitions of harassment, serious injury, and incidental take.

Legal Authority for the Final Action

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) generally direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made, regulations are promulgated (when applicable), and public notice and an opportunity for public comment are provided.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the affected species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). If such findings are made, NMFS must prescribe the permissible methods of taking and ''other means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to as ''mitigation'') and requirements pertaining to the monitoring and reporting of such takings.

As noted above, no serious injury or mortality is anticipated or authorized in this final rule. Relevant definitions of MMPA statutory and regulatory terms are included below:

- *U.S. Citizens*—individual U.S. citizens or any corporation or similar entity if it is organized under the laws of the United States or any governmental unit defined in 16 U.S.C. 1362(13) (50 CFR 216.103);
- *Take*—to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal (16 U.S.C. 1362(13); 50 CFR 216.3);
- *Incidental harassment, incidental taking, and incidental, but not intentional, taking*—an accidental taking. This does not mean that the taking is unexpected, but rather it includes those takings that are infrequent, unavoidable, or accidental (see 50 CFR 216.103);
- *Serious Injury*—any injury that will likely result in mortality (50 CFR 216.3);
- *Level A harassment*—any act of pursuit, torment, or annoyance which has the potential to injure a marine mammal or marine mammal stock in the wild (16 U.S.C. 1362(18); 50 CFR 216.3); and
- *Level B harassment*—any act of pursuit, torment, or annoyance which has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (16 U.S.C. 1362(18); 50 CFR 216.3).

Section 101(a)(5)(A) of the MMPA and the implementing regulations at 50 CFR part 216, subpart I provide the legal basis for proposing and, if appropriate, issuing regulations and an associated LOA(s). This final rule describes permissible methods of taking and mitigation, monitoring, and reporting requirements for USSF's activities.

The National Defense Authorization Act for Fiscal Year 2004 (2004 NDAA, Pub. L. 108–136) amended the MMPA to remove the ''small numbers'' and ''specified geographical region'' limitations indicated above and amended the definition of ''harassment'' as applied to a ''military readiness activity.'' Missile launches conducted at VSFB, which comprise a small portion of the activities, are considered military readiness activities pursuant to the MMPA, as amended by the 2004 NDAA.

Summary of Major Provisions Within the Final Rule

The major provisions of this final rule are:

- Scheduling launches to avoid lowest tides during harbor seal and California sea lion pupping seasons, when practicable;
- Required flight paths for aircraft takeoffs and landings and minimum altitude requirements to reduce disturbance to haul out areas;
- Required minimum altitudes for unscrewed aerial systems (UAS);
- Required acoustic and biological monitoring during a subset of launches to record the presence of marine mammals and document marine mammal responses to the launches; and
- Required semi-monthly surveys of marine mammal haulouts at VSFB and Northern Channel Islands (NCI).

Summary of Request

On November 2, 2022, NMFS received a request from USSF requesting authorization for the take of marine mammals incidental to rocket and missile launch activities and aircraft operations at VSFB in Vandenberg, California. Following NMFS' review of the materials provided, USSF submitted a revised application on May 25, 2023. The application was deemed adequate and complete on May 26, 2023. USSF's request for authorization pertains to incidental take of six species of marine mammals, by Level B harassment only.

On June 15, 2023, we published a notice of receipt of the USSF's application in the **Federal Register** (88 FR 39231), requesting comments and information related to the USSF request for 30 days. We received no responsive comments. On January 29, 2024, NMFS published a proposed rule in the **Federal Register** (89 FR 5451). The public comment period on the proposed rule was open for 30 days on *https://*

www.regulations.gov starting on January 29, 2024, and closed after February 28, 2024. The public comments can be viewed at *https://www.regulations.gov/document/NOAA-NMFS-2024-0008-0003/comment;* a summary of public comments received during this 30-day period and NMFS responses are described in the Comments and Responses section.

The take of marine mammals incidental to rocket and missile launches and aircraft operations at VSFB is currently authorized via an LOA issued under current incidental take regulations, which are effective through April 10, 2024 (84 FR 14314; April 10, 2019). To date, NMFS has promulgated incidental take regulations under the MMPA for substantially similar activities at the site four times.

Responsibility for activities at the site were transferred from the U.S. Air Force (USAF) to the USSF in May 2021, and both entities complied with the requirements (*e.g.,* mitigation, monitoring, and reporting) of the current LOA. Information regarding the monitoring results may be found in the Potential Effects of the Specified Activity on Marine Mammals and their Habitat section.

Description of the Specified Activity

USSF operations include rocket and missile launch activities that create noise (launch noise and/or sonic booms (overpressure of high-energy impulsive sound)) and visual stimulus that can take pinnipeds hauled out on shore along the periphery of VSFB by Level B harassment. In addition, a subset of rocket launches can create noise that affects pinniped haul outs along the shoreline of the Northern Channel Islands (NCI), particularly San Miguel and Santa Rosa islands. In addition to rocket and missile launch activities at VSFB, aircraft (crewed fixed wing airplanes and rotary wing helicopters, and different types of UAS) conduct flight operations to support activities at VSFB, and USSF operates a small harbor on the south coast. The activities will occur over the 5-year period of the regulations, from April 2024 through April 2029. Activities will occur year-round and could occur at any time of day, during any or all days of the week. As annual launch numbers increase, more than one launch could occur on some days.

A detailed description of the planned activities comprising the specified activity is provided in the proposed rule (89 FR 5451, January 29, 2024) and is not repeated here. Since that time, there have been minor changes to the schedule for rocket launches and the amount of harbor operations that do not affect the analyses in the proposed rule, as described below in the Changes from the Proposed to Final Rule section of this final rule.

Required mitigation, monitoring, and reporting measures are described in detail later in this document (see the Mitigation and Monitoring and Reporting sections of this final rule).

Comments and Responses

The proposed rule, which was published in the **Federal Register** on January 29, 2024 (89 FR 5451), described, in detail, USSF's activity, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals. The proposed rule also requested public input on the request for authorization described therein, our analyses, our preliminary determinations, and any other aspect of the proposed rule, and requested that interested persons submit relevant information, suggestions, and comments.

During the 30-day public comment period, NMFS received comments from seven members of the general public and recommendations from the Marine Mammal Commission. All relevant substantive comments and NMFS' responses are summarized below. The comments are available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities.* Please see the comment submissions for full details.

Comment 1: A commenter stated that USSF is requesting authorization from NMFS to take the marine mammals out of an area where they will be completing tests for 5 years. The commenter stated that NMFS should require USSF to provide proper shelter and habitat for the marine mammals and that NMFS should not be responsible for transport of the marine mammals.

Response: The commenter appears to have misunderstood the intent of this rulemaking, and NMFS has clarified herein. While this proposed rule is titled ''Taking Marine Mammals Incidental to U.S. Space Force Launches and Supporting Activities at Vandenberg Space Force Base, Vandenberg, California,'' the rule and associated LOA would not authorize USSF to transport marine mammals to another location. Rather, this final rule and LOA authorize USSF to ''take'' marine mammals by Level B harassment. The MMPA defines Level B harassment for military readiness and non-military readiness activities. Take by Level B harassment authorized by this final rule and LOA would be in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to launch related visual or auditory stimulus. As such, while NMFS considered impacts of USSF's activities to marine mammal habitat, as described in the Potential Effects of the Specified Activity on Marine Mammals and Their Habitat section of the proposed rule (89 FR 5451, January 29, 2024) and this final rule, this final rule does not require USSF to provide shelter and habitat for marine mammals.

Comment 2: NMFS received comments stating that despite not doing substantial harm to pinnipeds, it should be of importance to minimize or potentially eliminate any take to the pinnipeds, and there must be a clear mitigation plan with an end goal of eliminating any takes; that it is imperative for the USSF to find a way that either absorbs or reflects the sound of sonic booms away from seals; and that USSF could explore the use of technology to reduce noise levels during launches.

One comment stated that a study of physical response from pinniped species is not enough to prove minimal harm, although the commenter stated that they admire the amount of research and attention the USSF gave to including biological effects in their research and USSF's acknowledgement of harm from these disturbances.

Another comment stated that it is important to consider the potential effects of launches and supporting activities on marine mammal populations and to implement measures to mitigate any negative impacts. The commenter stated that, for example, USSF could implement monitoring programs to assess the potential impact of their activities on marine mammal populations, and could adjust their operations if necessary to minimize any adverse effects.

Response: NMFS concurs with the commenters that appropriate mitigation for USSF's activity is important. While the statutory criteria for issuance of an ITA does not use the terminology of ''minimal harm'' to marine mammals, as described in the Mitigation section of this final rule, in order to authorize take under section 101(a)(5)(A) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (the latter not being

applicable for this action). As such, this final rule requires USSF to implement certain mitigation measures for its activities. For launches (rockets and missiles), USSF must provide pupping information to launch proponents at the earliest possible stage in the launch planning process to maximize their ability to schedule launches to minimize pinniped disturbance during pupping seasons on VSFB from 1 March to 30 April and on the Northern Channel Islands from 1 June to 31 July. If practicable, rocket launches predicted to produce a sonic boom on the Northern Channel Islands >3 pounds per square foot (psf) from 1 June—31 July will be scheduled to coincide with tides in excess of +1.0 feet (ft; 0.3 m), with an objective to do so at least 50 percent of the time. USSF will provide to NMFS for approval a detailed plan that outlines how this measure will be implemented. This measure will minimize occurrence of launches during low tides when harbor seals and California sea lions are anticipated to haul out in the greatest numbers during times of year when pupping may be occurring, thereby further reducing the already unlikely potential for separation of mothers from pups and potential for injury during stampedes. While harbor seal pupping extends through June, harbor seals reach full size at approximately 2 months old, at which point they are less vulnerable to disturbances. In consideration of those facts and practicability concerns raised by USSF, this measure does not extend through the later portion of the harbor seal pupping season at VSFB.

For manned flight operations, aircraft must use approved routes for testing and evaluation. Manned aircraft must also remain outside of a 1,000-ft (305 m) buffer around pinniped rookeries and haul-out sites (except in emergencies such as law enforcement response or Search and Rescue operations, and with a reduced, 500-ft (152 m) buffer at Small Haul-out 1). As discussed earlier, use of these routes and implementation of the buffer would avoid behavioral disturbance of marine mammals from manned aircraft operations.

For UAS, UAS classes 0–2 must maintain a minimum altitude of 300 ft (91 m) over all known marine mammal haulouts when marine mammals are present, except at take-off and landing. Class 3 must maintain a minimum altitude of 500 ft (152 m), except at take-off and landing. UAS classes 4 and 5 only operate from the VSFB airfield and must maintain a minimum altitude of 1,000 ft (305 m) over marine mammal haulouts except at take-off and landing. USSF must not fly class 4 or 5 UAS below 1,000 ft (305 m) over haulouts.

While absorbing or reflecting the sound of sonic booms away from seals, as suggested by the commenter, could be an effective measure in theory, such technology does not currently exist.

In addition to the mitigation described above, USSF must conduct monitoring as suggested by the commenter. USSF must conduct routine, semi-monthly counts on all haul out sites on VSFB and launch-specific monitoring at VSFB and/or NCI when specific criteria are met. Please see the Monitoring and Reporting section of this final rule for additional details.

Comment 3: A commenter noted that the USSF has requested a 5-year ITA, but will continue rocket and missile launches that take pinnipeds beyond the 5-year expiration of an authorization, such that it will need to request subsequent authorization(s). The commenter stated that a 5-year request is ''redundant'' if it will continue to be requested.

Response: Under section 101(a)(5)(A) of the MMPA, incidental take authorizations are limited to periods of 5 years at a time for all non-commercial fishing activities except military readiness activities, for which incidental take authorizations can be effective for up to 7 years at a time. Accordingly, for applicants or authorization-holders that want MMPA incidental take authorization for activities that extend beyond 5 (or 7) years, it is necessary for them to request, and NMFS to analyze and potentially issue, a new authorization every 5 (or 7) years.

NMFS also received recommendations from the Marine Mammal Commission (MMC), which are noted in the next section, Changes from the Proposed to Final Rule.

Changes From the Proposed to Final Rule

NMFS made changes to multiple components in this final rule, in part due to additional discussions with USSF, and in part as a result of recommendations provided by the MMC. These changes are relatively minor and in many cases, are intended to further clarify the requirements of the rule. In table 9 and table 13 of the proposed rule (89 FR 5451, January 29, 2024), the 5-year take numbers reflect the addition of the unrounded annual take estimates for each year. Following the MMC's recommendation, NMFS updated table 5 and table 10 of this final rule such that the 5-year take estimates reflect the sum of the rounded annual take numbers. This resulted in a change to the 5-year take estimate for harbor seal and elephant seal in table 5, and for California sea lion and Guadalupe fur seal in table 10.

NMFS made some minor changes to the monitoring measures in this final rule. First, as recommended by the MMC, NMFS clarified 50 CFR 217.65(c) to state that, at VSFB, USSF must conduct marine mammal monitoring and take acoustic measurements (1) for all new rockets, (2) for rockets (existing and new) launched from new facilities, (3) for larger or louder rockets (including those with new launch proponents) than those that have been previously launched from VSFB during their first three launches, and (4) for the first three launches from any new facilities during March through July. This updated language did not change the intent of the proposed measure. (In the proposed rule, this measure stated ''at VSFB, USSF must conduct marine mammal monitoring and take acoustic measurements for all new rockets (for both existing and new launch proponents using the existing facilities) that are larger or louder than those that have been previously launched from VSFB during their first three launches and for the first three launches from any new facilities during March through July.'') Second, also in response to an MMC recommendation, NMFS updated 50 CFR 217.65(c)(2) and (h)(2) to clarify that USSF must conduct a minimum of four surveys per day during the 72 hours prior to a launch and during the 48 hours after a launch. (The proposed rule did not include a required minimum number of surveys, and instead stated that ''monitoring must include multiple surveys each day.'') Third, upon further consideration, NMFS' final rule requires monitoring of launches with a sonic boom expected to exceed 7 psf from January 1 through February 28. (The proposed rule did not require monitoring on the NCI from October 1 through February 28 each year, a portion of which overlaps with elephant seal pupping.) This change is intended to ensure that some monitoring is conducted during the majority of the period when elephant seal pups may be present on the NCI.

NMFS also updated several reporting requirements as recommended by the MMC. NMFS updated § 217.65(j)(1) to require reporting of the number(s), type(s), and location(s) of rockets/missiles launched. NMFS also added the description of responses that would constitute harassment from this activity to § 217.65(j)(3)(iv) of this final rule. NMFS also edited § 217.65(j)(3)(v) to require that USSF report the length of

time the animal(s) remained off the haulout. Lastly, NMFS updated § 217.65(j)(3)(vii) to specify that the recorded sound levels associated with the launch must be reported in sound exposure level (SEL), peak sound pressure level (SPLpeak), and root mean square sound pressure level (SPLrms), and psf if a sonic boom occurs. Additionally, USSF must report the estimated distance of the recorder to the launch site and the distance of the closest animals to the launch site.

The required reporting frequency for individual launches has also been updated. The proposed rule would have required USSF to submit a launch report to NMFS' West Coast Region and Office of Protected Resources within 90 days for each rocket or missile launch where monitoring is required. In coordination with USSF, NMFS updated this measure to require USSF to submit this information in its annual report, rather than separate, launch-specific reports. NMFS anticipates that submission of this information in an annual report will be administratively simpler for USSF, and it will also make the information easier for NMFS and the public to locate and consider. NMFS also updated § 217.65(k), related to reporting of mortality or injury of marine mammals. As suggested by the MMC in its informal comments, this measure now requires that if real-time monitoring during a launch shows that the activity identified in § 217.60(a) is reasonably likely to have resulted in the mortality or injury of any marine mammal, USSF must notify NMFS within 24 hours (or next business day). NMFS and USSF must then jointly review the launch procedure and the mitigation requirements and make appropriate changes through the adaptive management process, as necessary and before any subsequent launches of rockets and missiles with similar or greater sound fields and/or sonic boom pressure levels. (In the proposed rule, this measure required reporting of likely mortality or injury of any marine mammals within 48 hours of discovery, but it did not specify steps that would be taken after a report is made.)

Further, after publication of the proposed rule, USSF notified NMFS that United Launch Alliance (ULA) concluded its lease of the space launch complex (SLC)–6 site, and SpaceX plans to begin launches of its Falcon and Falcon Heavy rockets in late 2024/early 2025. This would include no more than five Falcon Heavy launches per year. The total number of rocket launches from VSFB would not exceed the 110 launches estimated in the proposed rule (89 FR 5451, January 29, 2024). Further, while some of these launches may result in a sonic boom exceeding 2.0 psf over the NCI, the total number of launches exceeding the 2.0 psf threshold over NCI would not increase from that described in the proposed rule (89 FR 5451, January 29, 2024). Therefore these changes did not affect our analysis and changes to the take estimates were not warranted.

Additionally, as described in the proposed rule (89 FR 5451, January 29, 2024), USSF's activity includes harbor operations (*e.g.,* vessel transits). While pinnipeds may occur around the harbor, NMFS generally expects that they would be habituated to these routine harbor operations and, while they may show brief reactions to these activities, such reactions are not expected to qualify as Level B harassment. Since publication of the proposed rule, USSF has informed NMFS that harbor operations will be more extensive than initially anticipated and described in the proposed rule (up to 200 small barge operations per year vs. 30 as described in the proposed rule). However, this change does not alter our assessment that take is not expected to result from harbor operations.

Lastly, since publication of the proposed rule (89 FR 5451, January 29, 2024), NMFS released the draft 2023 Stock Assessment Reports (SARs; available at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports*). Therefore, in this final rule NMFS updated information on abundance and serious injury and mortality information for Steller sea lions, as reflected in the 2023 SARs (see table 1).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and relevant behavior and life history of the potentially affected species. NMFS fully considered all of this information, and we refer the reader to these descriptions and to additional information regarding population trends and threats that may be found in NMFS' SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*). More general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS' website (*https://www.fisheries.noaa.gov/find-species*).

Table 1 lists all species or stocks for which take is expected and authorized for this activity, and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no serious injury or mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species or stocks and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprise that stock. We also refer to studies and onsite monitoring to inform abundance and distribution trends within the project area. For some species, such as the Guadalupe fur seal, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' SARs. All values presented in table 1 are the most recent available at the time of publication and are available online at: *https://ww.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.*

TABLE 1—MARINE MAMMAL SPECIES [1] LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) [2]	Stock abundance (CV, N_{min}, most recent abundance survey) [3]	PBR	Annual M/SI [4]
Order Carnivora—Pinnipedia						
Family Otariidae (eared seals and sea lions):						
California Sea Lion	*Zalophus californianus*	United States	-, -, N	257,606 (N/A, 233,515, 2014).	14,011	>321
Guadalupe Fur Seal	*Arctocephalus townsendi*	Mexico	T, D, Y	34,187 (N/A, 31,019, 2013).	1,062	≥3.8
Northern Fur Seal	*Callorhinus ursinus*	California	-, D, N	14,050 (N/A, 7,524, 2013).	451	1.8
Steller Sea Lion	*Eumetopias jubatus*	Eastern	-, -, N	36,308 [5] (N/A, 36,308, 2022).	2,178	93.2
Family Phocidae (earless seals):						
Harbor Seal	*Phoca vitulina*	California	-, -, N	30,968 (N/A, 27,348, 2012).	1,641	43
Northern Elephant Seal	*Mirounga angustirostris*	California Breeding	-, -, N	187,386 (N/A, 85,369, 2013).	5,122	13.7

[1] Information on the classification of marine mammal species can be found on the web page for The Society for Marine Mammalogy's Committee on Taxonomy (*https://marinemammalscience.org/science-and-publications/list-marine-mammal-species-subspecies/;* Committee on Taxonomy (2022)).

[2] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[3] NMFS marine mammal SARs online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region.* CV is the coefficient of variation; N_{min} is the minimum estimate of stock abundance.

[4] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual mortality and serious injury (M/SI) often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

[5] Best estimate of counts that have not been corrected for animals at sea during abundance surveys. Estimates provided are for the U.S. only.

As indicated above, all six species (with six managed stocks) temporally and spatially co-occur with the specified activity to the degree that take is reasonably likely to occur. In addition to the 6 species of pinniped expected to be affected by the specified activities, an additional 28 species of cetaceans are expected to occur or could occur in the waters near the project area. However, we have determined that the potential stressors associated with the specified activities that could result in take of marine mammals (*i.e.,* launch noise, sonic booms and disturbance from aircraft operations) only have the potential to result in harassment of marine mammals that are hauled out of the water. Noise from the specified activities is unlikely to ensonify subsurface waters to an extent that could result in take of cetaceans. Therefore, we have concluded that the likelihood of the planned activities resulting in the harassment of any cetacean to be so low as to be discountable. Accordingly, cetaceans are not considered further in this final rule. Further, only one live northern fur seal has been reported at VSFB in the past 25 years (SBMMC 2012), at least two deceased fur seals have been found on VSFB. Guadalupe fur seals have yet to be reported at VSFB. Therefore, it is extremely unlikely that any fur seals will be taken at that site. However as discussed below, NMFS anticipates that both species could be taken at NCI. Steller sea lions are not anticipated to occur at NCI, and therefore, are not expected to be taken at that site, but are likely to be taken at VSFB. Harbor seal, northern elephant seal, and California sea lion are likely to be taken at both NCI and VSFB.

California sea otters (*Enhydra lutris nereis*) may also be found in waters off of VSFB, which is near the southern extent of their range. However, California sea otters are managed by the U.S. Fish and Wildlife Service and are not considered further in this final rule.

A detailed description of the species likely to be affected by USSF's activities, including brief introductions to the species and relevant stocks as well as available information regarding population trends and threats, and information regarding local occurrence, were provided in the proposed rule (89 FR 5451, January 29, 2024); since that time, we are not aware of any changes in the status of these species and stocks; therefore, detailed descriptions are not provided here. Please refer to the proposed rule for these descriptions. Please also refer to NMFS' website (*https://www.fisheries.noaa.gov/find-species*) for generalized species accounts.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

The effects of noise from USSF's activities have the potential to result in behavioral harassment of marine mammals in the vicinity of VSFB and the NCI. The proposed rule (89 FR 5451, January 29, 2024) included a discussion of the effects of anthropogenic noise on marine mammals and the potential effects of noise from USSF's activities on marine mammals and their habitat. That information and analysis is referenced in this final rule and is not repeated here; please refer to the proposed rule (89 FR 5451, January 29, 2024).

Estimated Take of Marine Mammals

This section provides an estimate of the number of incidental takes authorized by this rule and LOA, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact determinations.

Harassment is the only type of take expected to result from these activities. Except with respect to military readiness activities, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which: (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment). As stated above, a relatively small portion of USSF's

activities are considered military readiness activities. For military readiness activities, the MMPA defines ''harassment'' as: (i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) Any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where the behavioral patterns are abandoned or significantly altered (Level B harassment). The take estimate methodology outlined below is considered appropriate for the quantification of take by Level B harassment based on either of the two definitions.

Authorized takes are by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to launch related visual or auditory stimulus. Based on the nature of the activity and as shown in activity-specific studies (described below), Level A harassment is neither anticipated nor authorized. As described previously, no serious injury or mortality is anticipated or authorized for this activity. Below we describe how the authorized take numbers are estimated.

For acoustic impacts, generally speaking, we estimate take by considering: (1) acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) the number of days of activities. We note that while these factors can contribute to a basic calculation to provide an initial prediction of potential takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here (which include thresholds for take from launches and UAS, considered in combination with pinniped survey data in the form of daily counts) in more detail and present the take estimates.

Acoustic Thresholds

For underwater sounds, NMFS recommends the use of acoustic thresholds that identify the received levels above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur permanent threshold shift (PTS) of some degree (equated to Level A harassment). Thresholds have also been developed identifying the received level of in-air sound above which exposed pinnipeds would likely be behaviorally harassed. Here, thresholds for behavioral disturbance from launch activities have been developed based on observations of pinniped responses before, during, and after launches and UAS activity. For rocket and missile launches at VSFB, given the sound levels and proximity, NMFS assumes that all rocket launches will behaviorally harass pinnipeds of any species hauled out at sites around the periphery of the base. For rocket launches from VSFB that transit over or near NCI, based on several years of onsite behavioral observations and monitoring data, NMFS predicts that those that create a sonic boom over 2.0 psf could behaviorally harass pinnipeds of any species hauled out on NCI. For UAS activity NMFS predicts that, given the potential variability of locations, routing and altitudes necessary to meet mission needs, classes 0–3 could behaviorally harass pinnipeds of any species hauled out at VSFB.

Regarding potential hearing impairment, the effects of launch noise on pinniped hearing were the subject of studies at the site in the past. In addition to monitoring pinniped haul-out sites before, during and after launches, researchers were previously required to capture harbor seals at nearby haulouts and Point Conception to test their sensitivity to launch noises. Auditory Brainstem Response (ABR) tests were performed under 5-year SRPs starting in 1997. The goal was to determine whether launch noise affected the hearing of pinnipeds (MMCG and SAIC 2012a). The low frequency sounds from launches can be intense, with the potential of causing a temporary threshold shift (TTS), in which part or all of an animal's hearing range is temporarily diminished. In some cases, this diminishment can last from minutes to days before hearing returns to normal. None of the seals tested in these studies over a span of 15 years showed signs of TTS or PTS, supporting a finding that launch noise at the levels tested is unlikely to cause PTS and that any occurrence of TTS may be of short duration.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that are used in estimating the area ensonified above the acoustic thresholds, including source levels and transmission loss coefficient.

Because the haulouts at NCI are more distant from the rocket launch sites than those at VSFB, different methods are used to predict when launches are likely to impact pinnipeds at the two sites. As stated above, for rocket and missile launches at VSFB, NMFS conservatively assumes that all rocket launches will behaviorally harass pinnipeds of any species hauled out at sites around the periphery of the base. For rocket launches from VSFB that transit over or near NCI, NMFS predicts that those that are projected to create a sonic boom over 2 psf could behaviorally harass pinnipeds of any species hauled out on NCI. For UAS activity, NMFS predicts that classes 0–3 could behaviorally harass pinnipeds of any species hauled out at VSFB.

The USSF is not able to predict the exact areas that will be impacted by noise associated with the specified activities, including sonic booms, launch noise and UAS operations. Many different types of launch vehicle types are operated from VSFB. Different combinations of vehicles and launch sites create different sound profiles, and dynamic environmental conditions also bear on sound transmission. As such, the different haul-out sites around the periphery of the base are ensonified to varying degrees when launches and, when applicable, recoveries of first stage boosters occur. USSF is not able to predict the exact timing, types and trajectories of these future rocket launch programs. However, as described below, rocket launches are expected to behaviorally disturb pinnipeds at VSFB and some launches are also expected to disturb pinniped hauled out at NCI. Missiles are only expected to impact pinnipeds at Lion Rock (Point Sal), and UAS impacts are only expected to occur at Small Haulout 1 (in VSFB).

Therefore, for the purposes of estimating take, we conservatively estimate that all haulout sites at VSFB will be ensonified by rocket launch noise above the level expected to result in behavioral disturbance. Different space launch vehicles also have varying trajectories, which result in different sonic boom profiles, some of which are likely to affect areas on the NCI (San Miguel, Santa Rosa, Santa Cruz, and Anacapa). Based on several years of onsite monitoring data, harassment of marine mammals is unlikely to occur when the intensity of a sonic boom is below 2 psf. Santa Cruz and Anacapa Islands are not expected to be impacted by sonic booms in excess of 2 psf (USAF, 2018), therefore, USSF does not

anticipate take of marine mammals on these islands, and NMFS concurs. Sonic booms from VSFB launches or recoveries can impact haul out areas and may take marine mammals on San Miguel Island and occasionally on Santa Rosa Island. In order to accommodate the variability of possible launches and (when applicable) sonic booms over NCI, USSF estimates that 25 percent of pinniped haulouts on San Miguel and Santa Rosa Islands may be ensonified to a level above 2 psf. NMFS concurs, and we consider this to be a conservative assumption based on sonic boom models which show that areas predicted to be impacted by a sonic boom with peak overpressures of 2 psf and above are typically limited to isolated parts of a single island, and sonic boom model results tend to overestimate actual recorded sonic booms on the NCI (personal communication: R. Evans, USSF, to J. Carduner, NMFS, OPR).

Modeling has not been required for launches of currently deployed missiles because of their trajectories west of VSFB and north of San Miguel Island and the previously well-documented acoustic properties of the missiles. The anticipated Ground-Based Strategic Defense Program (GBSD) is expected to utilize approximately the same trajectories as the current intercontinental ballistic missile (ICBM), and the GBSD program will be required to model at least one representative launch. When missiles are launched in a generally western direction (they turn south several hundred miles from VSFB and at high altitude), there is no sonic boom impact on the NCI; thus take of pinnipeds on NCI is not anticipated from missile launches. Given flight characteristics and trajectories, take from missile launch is not anticipated for most species. However, given proximity and the generally western trajectory, noise from missile launches from North Base may take California sea lions that haul out at Lion Rock (Point Sal) near VSFB's northern boundary.

Marine Mammal Occurrence and Take Estimation

In this section, we bring together the information above and describe take from the three different activity types (rockets, missiles, and UAS) expected to occur at VSFB and NCI, the marine mammal occurrence data (based on two survey series specific to VSFB and NCI), species and location-specific data related the likelihood of either exposure (*e.g.,* tidal differences) or response (*e.g.,* proportion of previously recorded responses that qualify as take), and the amount of activity. We describe the calculations used to arrive at the take estimates for each activity, species, and location, and present the total estimated take in table 11.

NMFS uses a three-tiered scale to determine whether the response of a pinniped on land to stimuli is indicative of Level B harassment under the MMPA (table 2). NMFS considers the behaviors that meet the definitions of both movements and flushes in table 2 to qualify as Level B harassment. Thus a pinniped on land is considered by NMFS to have been taken by Level B harassment if it moves greater than two times its body length, or if the animal is already moving and changes direction and/or speed, or if the animal flushes from land into the water. Animals that become alert or stir without other movements indicative of disturbance are not considered harassed. Prior observations of pinniped responses to certain exposures may be used to predict future responses and assist in estimating take. Here, the levels of observed responses of particular species during monitoring are used to inform take estimate correction factors as described in the species and activity-specific sections below.

TABLE 2—LEVELS OF PINNIPED BEHAVIORAL DISTURBANCE ON LAND

Level	Type of response	Definition	Characterized as Level B harassment by NMFS
1	Alert	Seal head orientation or brief movement in response to disturbance, which may include turning head towards the disturbance, craning head and neck while holding the body rigid in a u-shaped position, changing from a lying to a sitting position, or brief movement of less than twice the animal's body length.	No.
2	Movement	Movements in response to the source of disturbance, ranging from short withdrawals at least twice the animal's body length to longer retreats over the beach, or if already moving a change of direction of greater than 90 degrees.	Yes.
3	Flush	All retreats (flushes) to the water	Yes.

Data collected from marine mammal surveys, including monthly marine mammal surveys and launch-specific monitoring conducted by the USSF at VSFB, and observations collected by NMFS at NCI, represent the best available information on the occurrence of the six pinniped species expected to occur in the project area. Monthly marine mammal surveys at VSFB are conducted to document the abundance, distribution and status of pinnipeds at VSFB. When possible, these surveys are timed to coincide with the lowest afternoon tides of each month, when the greatest numbers of animals are usually hauled out. Data gathered during monthly surveys include: species, number, general behavior, presence of pups, age class, gender, reactions to natural or human-caused disturbances, and environmental conditions. Some species are observed regularly at VSFB and the NCI (*e.g.,* California sea lion), while other species are observed less frequently (*e.g.,* northern fur seals and Guadalupe fur seals).

Take estimates were calculated separately for each stock in each year that the regulations are valid (from 2024 to 2029), on both VSFB and the NCI, based on the number of animals assumed hauled out at each location that are expected to be behaviorally harassed by the stimuli associated with the specified activities (*i.e.,* launch, sonic boom, or UAS noise). First, the number of hauled out animals per month was estimated at both VSFB and the NCI for each stock, based on survey data and subject matter expert input. Second, we estimated the percentage of animals that would be taken by harassment from a launch at a given site, using the corrections and adjustments. In order to determine that percentage, we considered whether certain factors could result in fewer than

the total estimated number at a location being harassed. These factors include whether the extent of ensonification is expected to affect only a portion of the animals in an area, tidal inundation that displaces animals from affected areas and for species reactivity to launch noise, life history patterns and, where appropriate, seasonal dispersal patterns.

Launches covered in this authorization are not expected to produce a sonic boom over the mainland except that some first stage recoveries back to launch facilities on the base that may do so. Because first stage recoveries always occur within 10 minutes of the initial launch, a response from any given animal to both launch and recovery are considered to be one instance of take, even when both launch and recovery meet or exceed the 2 psf threshold for calculating take.

Vandenberg Space Force Base

As described above, rocket launches, missile launches, and UAS activities are expected to result in take of pinnipeds on VSFB at haul outs along the periphery of the base. Because the supporting information and/or methods are different for these three activity types, we describe them separately below. Launches from different launch facilities at VSFB create different degrees of ensonification at specific haul out sites, and further, USSF has limited ability to forecast which launch sites may be used for future launches. As described previously, some launches also involve the recovery of a booster component back to the launch site, or to an alternate offshore location.

As noted above, NMFS first estimated the number of hauled out animals per month at VSFB for each stock. NMFS used marine mammal counts collected by USSF during monthly marine mammal surveys to approximate haulout abundance. NMFS compared monthly counts for a given species from 2020 to 2022 and selected the highest count (sum across all haul out sites) for each month for each species, as indicated in table 3. NMFS then selected the highest monthly count for each species and used that as the estimated number of animals that would be hauled out at any given time during a launch. Because launches from different SLCs impact different haul-outs, we expect that using this highest monthly estimate will result in a conservative take estimate. Therefore, NMFS considers the 2020–2022 survey data relied upon to be the best data available.

As further indicated in the table 4, and described below, the predicted number of animals taken by each launch, by species, is adjusted as indicated to account for the fact that (1) for some species, animals are only hauled out and available to be taken during low tide and (2) years of monitoring reports showing that different species respond behaviorally to launches in a different manner.

TABLE 3—VSFB MAX COUNTS FROM MONTHLY SURVEYS, 2020–2022

Month	Pacific harbor seal	California sea lion	Steller sea lion	Northern elephant seal
Jan	61	11	None in USSF record 2020–2022	76
Feb	73	9	0	63
Mar	105	0	0	50
Apr	87	3	0	173
May	95	*112	0	*302
Jun	*149	72	0	78
Jul	61	26	0	20
Aug	60	1	0	11
Sept	54	16	0	82
Oct	59	2	0	228
Nov	65	28	0	251
Dec	51	16	0	122
			USSF Estimated Max: 5*	

Note: * indicates the highest monthly count for a given species.

Rocket Launches at VSFB

USSF assumes that all rocket launches will take, by Level B harassment, animals hauled out at sites around the periphery of the base. Some rocket launches create overpressure at time of launch, and some recoveries of first-stage boosters can create a sonic boom when they return to the launch pad. Some flights also transit over or near portions of the NCI, but potential impacts to marine mammals at the NCI are discussed separately, below.

Table 5 lists the authorized take by Level B harassment from rocket launch and recovery activities at VSFB, and below we describe how NMFS estimated take for each species. Note that northern fur seal and Guadalupe fur seal are not anticipated to occur at VSFB, and therefore, NMFS does not anticipate impacts to these species at VSFB.

Harbor Seals

Pacific harbor seals haul out regularly at more than ten sites on both north and south VSFB. They are the most widespread pinniped species on VSFB and have been seen in all months, with decades of successful pupping. Rocket launches from sites closer to the haulouts are more likely to cause disturbance, including noise and visual impacts. Many of their haulout sites are inundated during high tide, and NMFS anticipates that take of this species will only occur during low tides. Rocket launches from sites closer to the haulouts are more likely to cause disturbance, including noise and visual impacts. However, to capture variability, we assume that all rocket launches result in Level B harassment of 100 percent of the harbor seals at all VSFB haulouts.

To determine the number of animals that will be taken by Level B harassment, we multiplied the max count indicated in table 3 by the number of planned launches per year (table 5) for each year of the authorization. As noted in table 3, monitoring data show that, generally speaking, most if not all harbor seals exposed to launch noise exhibit a behavioral response to launch stimulus that equates to take by Level B harassment and, therefore, we predict that 100 percent of animals exposed to launch noise will be taken per launch. However, given that most haulout sites at VSFB are inundated at high tide, NMFS applied a 50 percent correction factor (table 4). Therefore, estimated

takes = max daily count (149) X tidal correction factor (0.5) X number of rocket launches in the area for each year for each year (40 in year 1, *etc.*), and the resulting take numbers NMFS is authorizing are listed in table 5.

California Sea Lion

California sea lions on VSFB only haul out regularly at Rocky Point (north and south) and Amphitheatre Cove. California sea lions are most abundant at the haul out in Zone G at Lion Rock (Point Sal). Rocket launches from SLC–6, SLC–8, and the future SLC–11, which are closest to North Rocky Point, will be the most likely to result in noise and visual impacts. Rocket launches from SLC–3E and SLC–4E, both farther inland and some four times the distance, are less likely to impact California sea lions at North Rocky Point. During very high tides and strong winds, when spray is heavy, the sea lions often leave this site or are unable to access it. Therefore, NMFS assumes that for any given rocket launch at VSFB, 50 percent of the maximum number of California sea lions that haul out at VSFB may be taken by Level B harassment.

To determine the number of animals that will be taken by Level B harassment, we multiplied the max count indicated in table 3 by the number of planned launches per year (table 5) for each year of the authorization. As noted in table 3, monitoring data show that, generally speaking, most if not all California sea lions hauled out at VSFB will exhibit a behavioral response to launch stimulus that equates to take by Level B harassment and, therefore, we predict that 100 percent of animals exposed to launch noise will be taken per launch. However, given that most haulout sites at VSFB are inundated at high tide, NMFS applied a 50 percent correction factor (table 4). Therefore, the number of estimated takes = max daily count (112) × tidal correction factor (0.5) × number of rocket launches in the area (40 in year 1, *etc.*), and the resulting take numbers NMFS is authorizing are listed in table 5.

Northern Elephant Seal

Northern elephant seals historically hauled out at VSFB only rarely, and most animals observed onsite were subadult males. In 2004, a record count of 188 animals was made, mostly newly weaned seals (MMCG and SAIC 2012a); these numbers continued to increase (unpublished data, however reported annually to NMFS). In November 2016, mature adults were observed in Amphitheatre Cove, and pupping was first documented in January 2017 with 18 pups born and weaned. In January 2018, a total of 25 pups were born and weaned; 26 in 2019, 34 in 2020, 33 in 2021 and 49 in 2022. Two pups were born and weaned at Boathouse Beach in both 2021 and 2022. We assume that this site, in addition to Amphitheater, will support pupping in future years. Pupping occurs from December through March, with peak breeding in mid-February.

To determine the number of animals that will be taken by Level B harassment, we multiplied the max count indicated in table 3 by the number of planned launches per year (table 5) for each year of the authorization. As noted in table 3, given elephant seals' known lack of sensitivity to noise, based on VSFB monitoring reports and the literature, NMFS predicts that only 15 percent of elephant seals exposed to the launch noise will respond in a manner that constitutes take by Level B harassment, and, therefore, a 15 percent correction factor was applied. We also note that, unlike for harbor seals and California sea lions, Northern elephant seal presence and numbers are not affected by tides. Therefore, the number of estimated takes = highest daily count (302) × behavioral harassment correction factor (0.15) × number of rocket launches in the area for each year (40 in year 1, *etc.*), and the resulting take numbers NMFS is authorizing are listed in table 5.

Steller Sea Lion

Steller sea lions have been observed at VSFB since April 2012 (MMCG and SAIC 2012c), though as indicated in table 3, they were not observed between 2020 and 2022. For purposes of estimating take, USSF estimates that up to five Steller sea lions may haul out at VSFB during any given launch. NMFS multiplied this number by the number of planned launches per year for each year of the authorization (table 5). NMFS assumes that all rocket launches result in behavioral disturbance (*i.e.,* Level B harassment) of 100 percent of the Steller sea lions hauled out at VSFB. Therefore, the number of estimated takes = 5 animals × number of rocket launches in the area (40 in year 1, *etc.*), and the resulting take numbers NMFS is authorizing are listed in table 5.

TABLE 4—CORRECTIONS AND ADJUSTMENTS BY STOCK AT VSFB [1] [2]

Stock	VSFB, tidal inundation correction (percent)	VSFB, behavioral disturbance correction (percent)
Harbor seal (California)	50	100
California sea lion (California)	50	100
Northern elephant seal (CA Breeding)	N/A	15
Steller sea lion (eastern)	N/A	100

[1] Northern elephant seals and Steller sea lion takes are adjusted to reflect observed species-specific reactivity to launch stimulus.
[2] "N/A" indicates that no tidal adjustment was made.

TABLE 5—AUTHORIZED ANNUAL AND 5-YEAR INSTANCES OF INCIDENTAL TAKE FROM ROCKET LAUNCH AND RECOVERY ACTIVITIES AT VSFB

	2024	2025	2026	2027	2028	5 year total estimated takes
Number of Rocket Launches	40	55	75	100	110	
Pacific harbor seal (CA)	2,980	4,098	5,588	7,450	8,195	28,311
California sea lion (U.S.)	2,240	3,080	4,200	5,600	6,160	21,280
Northern elephant seal (CA breeding)	1,812	2,492	3,398	4,530	4,983	17,215
Steller sea lion (Eastern)	200	275	375	500	550	1,900

UAS at VSFB

As stated in the Description of Proposed Activity section of the proposed rule (89 FR 5451, January 29, 2024), while harassment of hauled out pinnipeds from UAS classes 0–2 is unlikely to occur at altitudes of 200 ft (61 m) and above (Erbe *et al.,* 2017; Pomeroy *et al.,* 2015; Sweeney *et al.,* 2016; Sweeney and Gelatt, 2017), USSF conservatively assumes that UAS classes 0–3 operations will take, by Level B harassment, some animals hauled out at Small Haul-Out 1 at VSFB. Aircraft are required to maintain a 1,000-ft (305 m) buffer around pinniped haul-out and rookery areas except in emergency circumstances, such as Search and Rescue. However, Small Haul-Out 1, has a reduced 500-ft (152 m) buffer because pinnipeds using this particular site have acclimated to the activity. Therefore, a small number of takes by Level B harassment may result from UAS activity at Small Haul-Out 1, only. Table 6 lists the authorized take by Level B harassment at VSFB from UAS activities, and below, we describe how NMFS estimated take for each species. Note that northern fur seal and Guadalupe fur seal are not anticipated to occur at VSFB, and therefore, NMFS does not anticipate impacts to these species at VSFB. While Northern elephant seals have been observed on nearby beaches, only Pacific harbor seals and California sea lions are known to use Small Haul-Out 1, and therefore, these are the only species anticipated to be taken by UAS activities.

Pacific Harbor Seal

Pacific harbor seals are the most common species at Small Haul-Out 1. USSF estimates that up to six harbor seals may be taken by Level B harassment at Small Haul-Out 1 during any given UAS activity, based upon previous monitoring data at Small Haul-Out site 1. NMFS concurs, and multiplied this number by the number of planned UAS class 0–3 activities per year (100). Therefore, the number of estimated takes per year = 6 animals × 100 UAS activities, and the resulting take numbers NMFS is authorizing are listed in table 6.

California Sea Lion

California sea lions haul out at Small Haul-Out 1, though they are less abundant than Pacific harbor seals at that site. USSF estimates that up to one California sea lion may be taken by Level B harassment at Small Haul-Out 1 during any given UAS activity, based upon previous monitoring data at Small Haul-Out site 1. NMFS concurs, and multiplied this number by the number of planned UAS class 0–3 activities per year (100). Therefore, the number of estimated takes per year = 1 animal × 100 UAS activities, and the resulting take numbers NMFS is authorizing are listed in table 6.

TABLE 6—TAKE BY LEVEL B HARASSMENT OF PINNIPEDS FROM UAS ACTIVITY

Species	Annual take by Level B harassment	5-Year total take by Level B harassment
Pacific harbor seal	600	3,000
California sea lion	100	500

Missiles at VSFB

USSF oversees missile launches from seven locations on VSFB. The launches occur on a routine basis up to 15 times per year. In addition to originating from different locations than rockets, missile trajectories are also different. All missile launches tend in north-westerly direction, and missiles in flight transition to a near-horizontal profile shortly after launch. USSF's application describes that missile launches are not anticipated to result in take of pinnipeds at south VSFB, as they do not create a ''boom.'' However, USSF anticipates, and NMFS concurs, that missile launches from sites in North Base could take California sea lions at Lion Rock (Point Sal), an off-base location. Lion Rock (Point Sal) is the only site at which USSF anticipates that take of pinnipeds may occur during missile activities, and NMFS concurs. Lowry *et al.* (2021) provides marine mammal occurrence data at Lion Rock (Point Sal) for July 2016 and July 2017. While NMFS used more recent data (2020 to 2022) to estimate take of pinnipeds during rocket launch and UAS activities (described above), those surveys did not include Lion Rock (Point Sal), and therefore, NMFS has relied on the Lowry *et al.* (2021) data for missile launch impacts.

For purposes of estimating take, NMFS conservatively estimates that up to 518 California sea lions may haul out at Lion Rock (Point Sal) during any given missile launch. This is the higher count of California sea lions at the site from 2016 (Lowry *et al.* 2021). NMFS multiplied this number by the number of planned launches per year (15 launches). NMFS conservatively assumes that all California sea lions at the site will be taken by Level B harassment during any given missile launch, though it is relatively unlikely that all 15 launches will fly close enough to this site to cause Level B harassment. Therefore, the number of estimated takes = 518 animals × number of missile launches in the area in a given year (15), and NMFS proposes to authorize 7,770 takes by Level B harassment of California sea lion annually (38,850 over the duration of the authorization) from missile launches at VSFB, as indicated in table 7.

TABLE 7—AUTHORIZED INSTANCES OF INCIDENTAL TAKE FROM MISSILE LAUNCHES (MILITARY READINESS ACTIVITY) AT VSFB

Species	Location	High count	Launches/year	Annual takes	5 year total takes [1]
California sea lion	Lion Rock, Point Sal	518 (2019)	15	7,770	38,850

[1] Annual take * 5 years.

NCI

While USSF does not propose launching rockets from NCI, as noted previously, a subset of VSFB rocket launches transit over or near NCI, and a subset of those may create a sonic boom that affects some portion of pinniped haulouts on NCI (San Miguel and Santa Rosa). No take of pinnipeds on NCI is expected to result from missile launches or UAS activities. To estimate take of marine mammals at NCI resulting from rocket launches at VSFB, NMFS first estimated the number of hauled out animals per species across all potentially affected haulouts on San Miguel and Santa Rosa Islands. NMFS selected the high count from San Miguel and Santa Rosa Islands between 2017 and 2019 (NOAA Technical Memorandum SWFSC–656 (Lowry *et al.,* 2021) and summed the high counts from each site (table 7). NMFS then applied a correction factor to this estimate to account for whether a given species is expected to be hauled out in the area during all or a portion of the year (table 9). This is referred to as Step 1 below.

Next, NMFS determined the approximate number of sonic booms over 2 psf anticipated to occur over the NCI (28 over 5 years, as reflected in USSF's application). USSF's application indicates that during previous monitoring of pinnipeds on NCI during rocket launches, few to no behavioral reactions that would qualify as Level B harassment using the 3-point scale (table 5) were observed during sonic booms of less than 2 psf. Therefore, in estimating take herein, NMFS assumes that take of marine mammals will only occur during sonic booms of 2 psf or greater. Summarizing 20 years of sonic boom modeling (MMCG and SAIC, 2012a), we anticipate that no more than 25 percent of space launches will produce a sonic boom greater than 2 psf over the NCI (estimated to be 28 launches over 5 years). On one occasion, pinnipeds on one side of San Miguel Island reacted to a boom, while animals 4 miles (6 km) away on the other did not react, nor was the boom detected there by acoustic instruments (MMCG and SAIC, 2012a). Therefore, NMFS multiplied the number of annual booms (table 10) by a 0.25 correction factor for all species and rounded each year up to the next whole number. This is referred to as step 2 below.

Next, NMFS multiplied the number of animals anticipated to be at a haulout during a launch (calculated in step 1) by the number of annual launches anticipated to affect animals at the haulouts (calculated in step 2), and then multiplied the product by the likelihood of a given species responding in a manner that would be considered take by Level B harassment (table 10). NMFS describes the calculations in further detail for each species, below.

TABLE 8—NCI, HIGH COUNT 2017–2019 FROM SWFSC–656

[Lowry et al. (2021)]

	2017	2019	High count from 2017 and 2019
Pacific harbor seal:			
San Miguel	230	254	254 (2019)
Santa Rosa	266	148	266 (2017)
Sum	.....	.....	520
California sea lion:			
San Miguel	49,252	60,277	60,277 (2019)
Santa Rosa	2,692	1,618	2,692 (2017)
Sum	.....	.....	62,969
Northern elephant seal:			
San Miguel	2,327	2,791	2,791 (2019)
Santa Rosa	1,169	1,015	1,169 (2017)
Sum	.....	.....	3,960
Northern fur seal:			
San Miguel	4,520	4,377	4,520 (2017)
Santa Rosa	N/R	N/R	N/R
Sum	.....	.....	4,520
Guadalupe fur seal:			
San Miguel	N/R	N/R	N/R
Santa Rosa	N/R	N/R	N/R
Sum	.....	.....	5
Steller sea lion:			
San Miguel	N/R	N/R	N/R
Santa Rosa	N/R	N/R	N/R
Sum	.....	.....	N/R

Note: N/R: No sightings recorded.

Harbor Seals

For harbor seal, the sum of the high counts at the San Miguel and Santa Rosa haulouts during 2017 and 2019 is 520. NMFS expects Pacific harbor seals to occur at the haulouts year round, and therefore did not apply a correction for seasonal occurrence. NMFS multiplied the harbor seal haulout abundance (520) by the number of booms anticipated to overlap the haulouts (table 10, calculated in step 2 above). Based on years of monitoring reports showing the responses of harbor seals at NCI (which is farther from the launch sites than the VSFB sites) to launches, NMFS anticipates that 50 percent of harbor

seals exposed to a sonic boom overlapping a haulout will be taken by Level B harassment. Therefore, for each year, the number of estimated takes = 520 animals × number of sonic booms over 2 psf × 0.5, and the resulting take numbers NMFS is authorizing are listed in table 10.

California Sea Lions

For California sea lion, the sum of the high counts at the San Miguel and Santa Rosa haulouts during 2017 and 2019 is 62,969. While some California sea lions remain in the general vicinity of southern California throughout the year and may haul out onshore, the use of haulout sites at NCI is principally for breeding during peak summer months. Given the fact that most male sea lions and a substantial portion of all sea lions are not onshore at NCI outside of the breeding season, we applied a 50 percent correction factor to better relate instances of take to the number of individuals that may be hauled out and subject to acoustic effects of launches. NMFS multiplied the California sea lion haulout abundance (62,969) by the number of booms anticipated to overlap the haulouts (table 10, calculated in Step 2 above). Based on years of monitoring reports showing the responses of California sea lions at NCI to launches, NMFS anticipates that 25 percent of California sea lions exposed to a sonic boom overlapping a haulout will be taken by Level B harassment. Therefore, for each year, the number of estimated takes = 62,969 animals × number of sonic booms over 2 psf × 0.25, and the resulting take numbers NMFS is authorizing are listed in table 10.

Northern Elephant Seals

For Northern elephant seal, the sum of the high counts at the San Miguel and Santa Rosa haulouts during 2017 and 2019 is 3,960. NMFS expects Northern elephant seals to occur at the haulouts year round, and therefore did not apply a correction for seasonal occurrence. NMFS multiplied the Northern elephant seal haulout abundance (3,960) by the number of booms anticipated to overlap the haulouts (table 10, calculated in step 2 above). Based on years of monitoring reports showing the responses of Northern elephant seals at NCI to launches, NMFS anticipates that 5 percent of Northern elephant seals exposed to a sonic boom overlapping a haulout will be taken by Level B harassment. Therefore, for each year, the number of estimated takes = 3,960 animals × number of sonic booms over 2.0 psf × 0.05, and the resulting take numbers NMFS is authorizing are listed in table 10.

Northern Fur Seal

For Northern fur seal, the sum of the high counts at the San Miguel and Santa Rosa haulouts during 2017 and 2019 is 4,377. Northern fur seals spend approximately 80 percent of the year at sea, generally well offshore (Carretta *et al.,* 2011; Caretta *et al.,* 2012). To account for that seasonal occurrence, NMFS applied a conservative seasonal correction factor of 60 percent. NMFS multiplied the Northern fur seal haulout abundance (4,377) by the number of booms anticipated to overlap the haulouts (table 10, calculated in step 2 above). Based on years of monitoring reports showing the responses of Northern fur seals at NCI to launches, NMFS anticipates that 5 percent of Northern fur seals exposed to a sonic boom overlapping a haulout will be taken by Level B harassment. Therefore, for each year, the number of estimated takes = 4,377 animals × number of sonic booms over 2 psf × 0.05, and the resulting take numbers NMFS is authorizing are listed in table 10.

Guadalupe Fur Seal

For Guadalupe fur seal, the sum of the high counts at the San Miguel and Santa Rosa haulouts during 2017 and 2019 is conservatively assumed to be five, despite them having not been recorded there, as noted in table 8. NMFS estimates the potential for Guadalupe fur seals to occur at the haulouts to be comparable throughout the year and, therefore, did not apply a correction for seasonal occurrence. NMFS multiplied the Guadalupe fur seal haulout abundance (five) by the number of booms anticipated to overlap the haulouts (table 10, calculated in step 2 above). Based on years of monitoring reports showing the responses of Guadalupe fur seals at NCI to launches, NMFS anticipates that 50 percent of Guadalupe fur seals exposed to a sonic boom overlapping a haulout will be taken by Level B harassment. Therefore, for each year, the number of estimated takes = five animals × number of sonic booms over 2 psf × 0.5, and the resulting take numbers NMFS is authorizing are listed in table 10.

TABLE 9—CORRECTIONS AND ADJUSTMENTS BY STOCK AT NCI [1] [2]

Species	Species response to sonic boom (percent)	Seasonal occurrence (percent of year)
Harbor seal	50	100
California sea lion	25	50
Northern elephant seal	5	100
Northern fur seal	25	[3] 60
Guadalupe fur seal	50	[4] N/A

[1] Northern elephant seals and Steller sea lion takes are adjusted to reflect observed species-specific reactivity to launch stimulus.
[2] "N/A" indicates that a species is not expected to occur at the location.
[3] Of note, from November to May, there are approximately 125 individuals at the NCI (S. Melin, 2019), further supporting a seasonal correction factor.
[4] Guadalupe fur seal are generally not expected to occur on the NCI. However, as described herein, given that they have occasionally been sighted on the NCI, NMFS is conservatively authorizing take of Guadalupe fur seal as described herein.

TABLE 10—AUTHORIZED TAKE BY LEVEL B HARASSMENT AT NCI

[San Miguel and Santa Rosa]

	2024	2025	2026	2027	2028	5-Year total take
Maximum number of sonic booms	5	12	24	30	33	
Maximum number of sonic booms over 2.0 psf	2	3	6	8	9	

TABLE 10—AUTHORIZED TAKE BY LEVEL B HARASSMENT AT NCI—Continued

[San Miguel and Santa Rosa]

	2024	2025	2026	2027	2028	5-Year total take
Pacific harbor seal	520	780	1,560	2,080	2,340	7,280
California sea lion	15,742	23,613	47,227	62,969	70,840	220,391
Northern elephant seal	396	594	2,970	3,960	4,455	12,375
Northern fur seal	1,313	1,970	3,939	5,252	5,909	18,383
Guadalupe fur seal	5	8	15	20	23	71

Total Authorized Take

Table 11 sums the take estimates described above for VSFB (rocket launches, missile launches, and UAS) and NCI (rocket launches only). These takes represent the number of instances of harassment of pinnipeds following exposure to the indicated activities. However, every take does not necessarily, and in this case is not expected to, represent a separate individual. Rather, given the known repeated use of haulouts by pinnipeds of all species, it is reasonable to expect that some subset of the calculated takes represent repeated takes of the same individuals, which means that the number of individuals taken is expected to be significantly smaller than the number of instances of take.

TABLE 11—TOTAL AUTHORIZED ANNUAL TAKE [1]

Species	2024	2025	2026	2027	2028	Highest 1-year take estimated	Stock abundance	Highest annual instances of take as percent of stock abundance
Pacific harbor seal	4,100	5,478	7,748	10,130	11,135	11,135	30,968	36
California sea lion	25,852	34,563	59,297	76,439	84,870	84,870	257,606	33
Northern elephant seal	2,208	3,086	6,368	8,490	9,438	9,438	187,386	5
Steller sea lion	200	275	375	500	550	550	36,308	2
Northern fur seal	1,313	1,970	3,939	5,252	5,909	5,909	14,050	42
Guadalupe fur seal	5	8	15	20	23	23	34,187	0

[1] Given the known repeated use of haulouts by pinnipeds of all species, it is reasonable to expect that some subset of the calculated takes represent repeated takes of the same individuals, which means that the number of individuals taken is expected to be significantly smaller than the number of instances of take.

Mitigation

In order to issue regulations and an LOA under section 101(a)(5)(A) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, and their habitat (50 CFR 216.104(a)(11)). The NDAA for Fiscal Year 2004 amended the MMPA as it relates to military readiness activities and the incidental take authorization process such that ''least practicable impact'' shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, NMFS considers two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost and impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Below, we describe the required mitigation measures for launches (rocket and missile), manned aircraft, and UAS.

Launches (Rocket and Missile)

USSF must provide pupping information to launch proponents at the earliest possible stage in the launch planning process to maximize their ability to schedule launches to minimize pinniped disturbance during pupping seasons on VSFB from 1 March to 30 April and on the Northern Channel Islands from 1 June–31 July. If practicable, rocket launches predicted to produce a sonic boom on the Northern Channel Islands >3 psf from 1 June–31 July will be scheduled to coincide with tides in excess of +1.0 ft (0.3 m), with an objective to do so at least 50 percent of the time. USSF will provide a detailed plan to NMFS for approval that outlines how this measure will be implemented. This measure will minimize occurrence of launches during low tides when harbor seals and California sea lions are anticipated to haul out in the greatest numbers during times of year when pupping may be occurring, therefore further reducing the

already unlikely potential for separation of mothers from pups and potential for injury during stampedes. While harbor seal pupping extends through June, harbor seals reach full size at approximately 2 months old, at which point they are less vulnerable to disturbances. In consideration of that and practicability concerns raised by USSF, this measure does not extend through the later portion of the harbor seal pupping season at VSFB.

Manned Aircraft

For manned flight operations, aircraft must use approved routes for testing and evaluation. Manned aircraft must also remain outside of a 1,000-ft (305 m) buffer around pinniped rookeries and haul-out sites (except in emergencies such as law enforcement response or Search and Rescue operations, and with a reduced, 500-ft (152 m) buffer at Small Haul-out 1). As discussed earlier, use of these routes and implementation of the buffer will avoid behavioral disturbance of marine mammals from manned aircraft operations.

UAS

UAS classes 0–2 must maintain a minimum altitude of 300 ft (91 m) over all known marine mammal haulouts when marine mammals are present, except at take-off and landing. Class 3 must maintain a minimum altitude of 500 ft (152 m), except at take-off and landing. UAS classes 4 and 5 only operate from the VSFB airfield and must maintain a minimum altitude of 1,000 ft (305 m) over marine mammal haulouts except at take-off and landing. USSF must not fly class 4 or 5 UAS below 1,000 ft (305 m) over haulouts.

Based on our evaluation of the applicant's proposed measures, NMFS has determined that the required mitigation measures provide the means of effecting the least practicable adverse impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an ITA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present while conducting the activities. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the activity; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and,
- Mitigation and monitoring effectiveness.

The USSF proposed a suite of monitoring measures on both VSFB and the NCI to document impacts of the specified activities on marine mammals. These monitoring measures include both routine, semi-monthly counts at all haul out sites on VSFB, and launch-specific monitoring at VSFB and/or NCI when specific criteria are met. For monitoring at VSFB and NCI, monitoring must be conducted by at least one NMFS-approved protected species observer (PSO) trained in marine mammal science. PSOs must have demonstrated proficiency in the identification of all age and sex classes of both common and uncommon pinniped species found at VSFB and the NCI. They must be knowledgeable of approved count methodology and have experience in observing pinniped behavior, especially that due to human disturbances, to document pinniped activity at the monitoring site(s) and to record marine mammal response to base operations. Specific requirements for monitoring locations at VSFB and NCI respectively, are described in additional detail below. In the event that the requirement for PSO monitoring cannot be met (such as when access is prohibited due to safety concerns), daylight or night-time video monitoring may be used in lieu of PSO monitoring. In certain circumstances where the daylight or nighttime video monitoring is not possible (*e.g.,* USSF is unable to access a monitoring site due to road conditions or human safety concerns), USSF must notify NMFS.

Rocket Launch Monitoring at VSFB

At VSFB, USSF must conduct marine mammal monitoring and take acoustic measurements for all new rockets, for rockets (existing and new) launched from new facilities, and for larger or louder rockets (including those with new launch proponents) than those that have been previously launched from VSFB during their first three launches, and for the first three launches from any new facilities during March through July (*i.e.,* the period during which harbor seals are pupping occurs and California sea lions are present).

For the purposes of establishing monitoring criteria for VSFB haulouts, computer software is used to model sound pressure levels anticipated to occur for a given launch and/or recovery. Sonic boom modeling will be performed prior to the first three small or medium rocket launches from new launch proponents or at new launch facilities, and all heavy or super-heavy rocket launches. PCBoom, a commercially available modeling program, or an acceptable substitute, will be used to model sonic booms from new vehicles.

Launch parameters specific to each launch will be incorporated into each model run, including: launch direction and trajectory, rocket weight, length, engine thrust, engine plume drag, and launch profile (vehicle position versus time from launch to first-stage burnout), among other aspects. Various weather scenarios will be analyzed from NOAA weather records for the region, then run through the model. Among other factors, these will include the presence or absence of the jet stream, and if present, its direction, altitude and velocity. The type, altitude, and density of clouds will also be considered. From these data, the models will predict peak amplitudes and impacted locations. As described below, this approach is also used to assess whether thresholds (table 12) for marine mammal monitoring on NCI could be exceeded or not, and whether

marine mammal monitoring will be necessary for animals hauled out at NCI.

In general, on both VSFB and NCI, event-specific monitoring typically involves four to six observations of each significant haul-out area each day, over a period of 3 to 5 hours. For launches that occur during the harbor seal pupping season (March 1 through June 30) or when higher numbers of California sea lions are present (June 1 through July 31), monitoring will be conducted by at least one NMFS-approved PSO trained in marine mammal science. Authorized PSOs shall have demonstrated proficiency in the identification of all age and sex classes of all marine mammal species that occur at VSFB. They shall be knowledgeable of approved count methodology and have experience in observing pinniped behavior, especially that due to human disturbances.

When launch monitoring is required, monitoring will begin at least 72 hours prior to the launch and continue through at least 48 hours after the launch. USSF will conduct a minimum of four surveys per day during these windows. For launches within the harbor seal pupping season, a 2-week follow-up pup survey will be required to ensure that there were no adverse effects to pups. During daylight monitoring, time-lapse video recordings will be made to capture the reactions of pinnipeds to each launch, and during nighttime monitoring, USSF will employ night video monitoring, when feasible. Monitoring will include multiple surveys each day. When possible, PSOs will record: species, number, general behavior, presence of pups, age class, gender, and reaction to launch noise, or to natural or other human-caused disturbances. They will also record environmental conditions, including visibility, air temperature, clouds, wind speed and direction, tides, and swell height and direction.

NCI Launch Monitoring

USSF will conduct marine mammal monitoring and take acoustic measurements at the NCI if the sonic boom model indicates that pressures from a boom will reach or exceed the psf level detailed in table 12 during the indicated date range. These dates were determined to be appropriate to account for sensitive seasons, primarily pupping, for the various pinniped species.

TABLE 12—NCI SONIC BOOM LEVEL REQUIRING MONITORING, BY DATE

Dates	Sonic boom level
1 January–28 February	>7 psf.
1 March–31 July	>5 psf.
1 August–30 September ...	>7 psf.
1 October–31 December ..	no monitoring.

USSF will use specialized acoustic instruments to record sonic booms generated by launches from VSFB and resulting overflights or recoveries predicted to affect NCI haul out sites. VSFB will analyze the recordings to determine the intensity, duration, and frequency of sonic booms and resulting marine mammal responses in order to compare monitoring results with levels considered potentially harmful to marine mammals. The analysis can also be used to validate the efficacy of the model.

Monitoring locations on NCI will be selected based upon the model results, prioritizing a significant haulout site on one of the islands where the maximum sound pressures are expected to occur. Currently, monitoring the reactions of northern fur seals and Pacific harbor seals to sonic booms is of a higher priority than monitoring of California sea lions and northern elephant seals, for which more data is currently available (table 5). Monitoring the reactions of mother-pup pairs of any species is also a high priority.

Considering the large numbers of pinnipeds (sometimes thousands) that occur on some NCI beaches, while estimates of the entire beach population will be made and their reactions to the launch noise noted, more focused and detailed monitoring will be conducted on a smaller subset or focal group. Photos and/or video recordings will be collected for daylight launches when feasible, and if the launch occurs in darkness night vision equipment will be used. Potential impediments to effective use of photographic and video equipment include periods of reduced visibility, terrain that obscures animals from view from one observation point, severe glare and fog that can occur, and/or other factors.

Monitoring will be conducted by at least one NMFS-approved PSO who is trained in marine mammal science. Another person will accompany the monitor for safety reasons. Monitoring will commence at least 72 hours prior to the launch, during the launch and at least 48 hours after the launch, unless no sonic boom is detected by the monitors and/or by the acoustic recording equipment, at which time monitoring will be stopped. If the launch occurs in darkness, night vision equipment will be used. Monitoring for each launch will include multiple surveys each day that record, when possible: species, number, general behavior, presence of pups, age class, gender, and reaction to sonic booms or natural or human-caused disturbances. Photos and/or video recordings will be taken when feasible. Environmental conditions will also be recorded, including visibility, air temperature, clouds, wind speed and direction, tides, and swell height and direction.

USSF will continue to test equipment and emerging technologies, including but not limited to night vision cameras, newer models of remote video cameras and other means of remote monitoring at both VSFB and on the NCI. UAS-based or space-based technologies that may become available will be evaluated for suitability and practicability, and for any advantage that remote sensing may provide to existing monitoring approaches, including ensuring coverage when scheduling constraints or other factors impede onsite monitoring at NCI.

Missile Launch Monitoring

Multiple years of monitoring indicates that missile launches do not result in significant take (*i.e.,* only a subset of pinnipeds, in the vicinity of the launch trajectory, respond in a manner that would qualify as a take, and the impacts appear comparatively minor and of short duration). Therefore, monitoring of marine mammals is only required for the first three launches of the missiles for the new GBSD during the months of March through July (*i.e.,* the period during which harbor seals are pupping and California sea lions are present) across the 5-year duration of this rule.

When missile launch monitoring is required, monitoring will include multiple surveys each day. When possible, PSOs will record: species, number, general behavior, presence of pups, age class, gender, and reaction to launch noise, or to natural or other human-caused disturbances. They will also record environmental conditions, including visibility, air temperature, clouds, wind speed and direction, tides, and swell height and direction.

USSF Semi-Monthly Sentinel Surveys

USSF conducts marine mammal surveys on a regular basis in addition to the monitoring that is required based on launch characteristics and sound pressure thresholds, described above. These regular surveys help characterize onsite trends in pinniped presence and abundance and, over the longer term, provide important context for

interpreting seasonal trends and launch-specific monitoring results. The current monthly surveys have allowed researchers to assess haul-out patterns and relative abundance over time, presenting a better picture of pinniped population trends at VSFB and whether USSF operations are resulting in cumulative impacts. For the period of this LOA, and in conjunction with changes of monitoring criteria for launches, the applicant will change the frequency of sentinel surveys from monthly to semi-monthly (two surveys per month).

Past surveys have captured important data including novel occurrences (such as unsuccessful California sea lion pupping on VSFB in 2003 and northern elephant seal pupping in 2017) and emerging or fleeting trends (such as greater numbers of northern elephant seals hauling out in 2004, and a temporary increase in California sea lions onsite in 2018 and 2019). These results, in conjunction with anticipated changes in launch activity and environmental factors underscore the value of consistent surveys collected on a regular basis, to provide sound context for launch-specific monitoring results.

USSF will conduct semi-monthly surveys (two surveys per month, rather than the current monthly surveys) to monitor the abundance, distribution, and status of pinnipeds at VSFB. Whenever possible, these surveys will be timed to coincide with the lowest afternoon tides of each month when the greatest numbers of animals are usually hauled out. South VSFB surveys start about two hours before the low tide and end two hours afterward. North VSFB surveys are either conducted by a separate surveyor on the same day as south VSFB, or on the day before/after south VSFB surveys. North VSFB surveys require approximately 90 minutes. Monitoring during nighttime low tides is not possible because of the dangerously unstable nature of the bluffs overlooking many of the observation points. Occasional VSFB or area closures also sometimes preclude monitoring on a given day, in which case the next best day will be selected.

NMFS-approved PSOs will gather the following data at each site: species, number, general behavior, presence of pups, age class, gender, and any reactions to natural or human-caused disturbances. They will also record environmental conditions, including visibility, air temperature, clouds, wind speed and direction, tides, and swell height and direction.

Adaptive Management

The regulations governing the take of marine mammals incidental to launches and supporting activities at VSFB contain an adaptive management component. Our understanding of the effects of launches and supporting activities (*e.g.,* acoustic and visual stressors) on marine mammals continues to evolve, which makes the inclusion of an adaptive management component both valuable and necessary within the context of 5-year regulations.

The reporting requirements associated with this rule are designed to provide NMFS with monitoring data from the previous year to allow NMFS to consider whether any changes to existing mitigation, monitoring or reporting requirements are warranted. The use of adaptive management also allows NMFS to consider new information from different sources to determine (with input from the USSF regarding practicability) on an annual or biennial basis if mitigation or monitoring measures should be modified (including additions or deletions). Mitigation measures could be modified if new data suggests that such modifications will have a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring and if the measures are practicable. If the modifications to the mitigation, monitoring, or reporting measures are more than minor, NMFS will publish a notice of the planned LOA in the **Federal Register** and solicit public comment.

Reporting

USSF is required to submit annual reports as well as a 5-year comprehensive report. USSF is not required to submit launch-specific reports within 90 days after each rocket launch where monitoring is required as was described in the proposed rule (89 FR 5451, January 29, 2024).

USSF must submit an annual report to NMFS on March 1st of each year that describes all activities and monitoring for the specified activities during that year. This includes launch monitoring information for each launch where monitoring is required or conducted, including the specific information described below in this section. The annual reports must also include a summary of the documented numbers of instances of harassment incidental to the specified activities, including non-launch activities (*e.g.,* takes incidental to aircraft or helicopter operations observed during the semi-monthly surveys). Annual reports must also include the results of the semi-monthly sentinel marine mammal monitoring.

Launch monitoring information in the annual reports must include the following:

- Date(s) and time(s) of the launch (and sonic boom, if applicable);
- Number(s), type(s), and location(s) of rockets or missiles launched;
- Monitoring program design; and
- Results of the monitoring program, including, but not necessarily limited to:
  - Date(s) and location(s) of marine mammal monitoring;
  - Number of animals observed, by species, on the haulout prior to commencement of the launch or recovery;
  - General behavior and, if possible, age (including presence of pups) and sex class of pinnipeds hauled out prior to the launch or recovery;
  - Number of animals, by species, age, and sex class, that responded at a level indicative of harassment;
  - Number of animals, by species, age, and sex class that entered the water, the length of time the animal(s) remained off the haulout, and any behavioral responses by pinnipeds that were likely in response to the specified activities, including in response to launch noise or a sonic boom;
  - Environmental conditions including visibility, air temperature, clouds, wind speed and direction, tides, and swell height and direction; and
  - Results of acoustic monitoring, including the following
    - Recorded sound levels associated with the launch (in SEL, SPL_{peak}, and SPL_{rms});
    - Recorded sound levels associated with the sonic boom (if applicable), in psf;
    - The estimated distance of the recorder to the launch site and the distance of the closest animals to the launch site.

USSF must submit a final comprehensive 5-year report no later than 180 days prior to expiration of these regulations. This report must summarize the findings made in all previous reports and assess both the impacts at each of the major rookeries and assess any cumulative impacts on marine mammals from the specified activities.

If real-time monitoring during a launch shows that the activity identified in § 217.60(a) is reasonably likely to have resulted in the mortality or injury of any marine mammal, USSF must notify NMFS within 24 hours (or next business day). NMFS and USSF must then jointly review the launch procedure and the mitigation

requirements and make appropriate changes through the adaptive management process, as necessary and before any subsequent launches of rockets and missiles with similar or greater sound fields and/or sonic boom pressure levels.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.,* intensity, duration), the context of any impacts or responses (*e.g.,* critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, this introductory discussion of our analysis applies to all the species listed in table 4, given that many of the anticipated effects of this project on different marine mammal stocks are expected to be relatively similar in nature. Where there are meaningful differences between species or stocks, or groups of species, in anticipated individual responses to activities, impact of expected take on the population due to differences in population status, or impacts on habitat, they are described independently in the analysis below.

USSF's activities, as outlined previously, have the potential to disturb and temporarily displace marine mammals. Specifically, the specified activities may result in take, in the form of Level B harassment only, from airborne sounds resulting from launches and recoveries, including sonic booms from certain launches and sound or visual stimuli from UAS operations. Based on the best available information, including monitoring reports from similar activities conducted at the site, the Level B harassment of pinnipeds will likely be limited to reactions such as moving a short distance, with some hauled out animals moving toward or flushing into the water for a period of time following the disturbance.

As mentioned previously, different species of marine mammals and different conditions at haul out sites can result in different degrees of response from the animals. Sufficient data collected onsite can be used to characterize the relative tendency of species to react to acoustic disturbance and, specifically, to noise from VSFB launches and operations. These distinctions in species response are discussed above in the Potential Effects of Specified Activities on Marine Mammals and Their Habitat section, and correction factors for species sensitivity are applied to the take estimates provided in this document.

As discussed earlier, Level B harassment of pinnipeds from rocket and missile launch activities or UAS exposure is primarily expected to be of relatively short duration, in the form of changing position, direction, or location on the haulout or, on a subset of occasions, flushing into the water for some amount of time (up to a few hours). UAS flights will be conducted in accordance with minimum altitude requirements designed to minimize impacts over haulouts and planning measures are in place to minimize launch effects to pinnipeds on beaches where pupping is occurring. Given the potential for seasonal site fidelity, it is likely that some individuals will be taken multiple times during the course of the year as a result of exposure to multiple launches, and potentially UAS overflights. However, given the intermittency of the launches and the fact that they do not all originate from the same location, these repeated exposures are not expected to result in prolonged exposures over multiple days. Thus, even repeated instances of Level B harassment of some small subset of an overall stock is unlikely to result in any significant realized decrease in fitness of those individuals, and thus will not result in any adverse impact to the stock as a whole. Level B harassment will be minimized through use of mitigation measures described above.

As discussed earlier, some of the beaches that may be impacted by launch activities and UAS overflights support pupping in some months, specifically for harbor seals (March through June on VSFB and NCI), California sea lions (May through August on NCI), elephant seals (January through March on VSFB and December through March on NCI), and northern fur seals (June through August on San Miguel Island, NCI).

Broadly speaking, flushing of pinnipeds into the water has the potential to result in mother-pup separation, or in extreme circumstances could result in a stampede, either of which could potentially result in serious injury or mortality. However, based on the best available information, including reports from over 20 years of monitoring pinniped response to launch noise at VSFB and the NCI, no serious injury or mortality of marine mammals is anticipated as a result of the activities. USSF is required to provide pupping information to launch proponents at the earliest possible stage in the launch planning process, to maximize their ability to schedule launches to minimize pinniped disturbance during Pacific harbor seal pupping on Vandenberg SFB (1 March to 30 April) and California sea lion pupping on the Northern Channel Islands (1 June–31 July of each year). If practicable, rocket launches predicted to produce a sonic boom on the Northern Channel Islands >5 psf during the California sea lion pupping season will be scheduled to coincide with tides in excess of +1.0 ft (0.3 m), with an objective to achieve such avoidance at least 50 percent of the time, which is expected to minimize the impacts at places and times where pupping could be occurring. Even in the instances of pinnipeds being harassed by sonic booms from rocket launches at VSFB, no evidence of abnormal behavior, injuries or mortalities, or pup abandonment as a result of sonic booms (SAIC 2013; CEMML, 2018) has been presented. These findings are supported by more than two decades of surveys at VSFB and the NCI (MMCG and SAIC, 2012). Post-launch monitoring generally reveals a return to normal behavioral patterns within minutes up to an hour or two of each launch, regardless of species. Of note, research on abundance and fecundity has been conducted at San Miguel Island (recognized as an important pinniped rookery) for decades. This research, as well as SARs, support a conclusion that operations at VSFB have not had significant impacts on the numbers of animals observed at

San Miguel Island rookeries and haulouts (SAIC, 2012). In addition, northern elephant seal pupping was documented on VSFB for the first time in 2017 and continued into 2022, further indicating that the effects of ongoing launch activities do not preempt new marine mammal activity and are unlikely to have impacted annual rates of recruitment or survival among affected species.

In summary and as described above, the following factors primarily support our determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No injury, serious injury, or mortality are anticipated or authorized;
- The anticipated instances of Level B harassment are expected to consist of, at worst, temporary modifications in behavior (*i.e.,* short distance movements and occasional flushing into the water with return to haulouts within approximately 60–120 minutes), which are not expected to adversely affect the fitness of any individuals;
- The planned activities are expected to result in no long-term changes in the use by pinnipeds of rookeries and haulouts in the project area, based on over 20 years of monitoring data; and
- The presumed efficacy of planned mitigation measures in reducing the effects of the specified activity.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the required monitoring and mitigation measures, NMFS finds that the total marine mammal take from the planned activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted previously, only take of small numbers of marine mammals may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. Here, a small portion of the activities (missile launches only) are considered military readiness activities, but we have conducted the assessment considering the totality of the take considered for this final rule. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the maximum number of individuals taken in any year to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. Generally, if the predicted annual number of individuals to be taken is fewer than one-third of the species or stock abundance for each year of the period of an authorization, the take is considered to be of small numbers. See 86 FR 5438–5440, January 19, 2021. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities. Here, we considered the tendency to show site fidelity among affected species, their seasonal distribution trends and the likelihood of individual animals being disturbed repeatedly (*i.e.,* taken by multiple launches across multiple days within a year), rather than treating each instance of take as though it was affecting a different individual.

For every year, the instances of take authorized of northern elephant seal, Steller sea lion, and Guadalupe fur seal comprise less than one-third of the best available population abundances respectively (table 11). The number of animals authorized to be taken from these stocks is considered small relative to the relevant stock's abundances even if each estimated instance of take accrued to a different individual, which is an unlikely scenario.

For harbor seals and California sea lions (years 4 and 5 only), and Northern fur seals (years 3, 4, and 5 only), the highest annual estimated instances of take are greater than or equal to one-third of the best available stock abundance (36, 33, and 42 percent, respectively). However, as noted previously, the number of expected instances of take does not always fairly represent the number of individual animals expected to be taken. The same individual can incur multiple takes by Level B harassment over the course of an activity that occurs multiple times in the same area (such as the USSF's planned activity), especially where species have documented site fidelity to a location within the project area, as is the case here. Additionally, due to the nature of the specified activity—launch activities affecting animals at specific haul out locations, rather than a mobile activity occurring throughout the much larger stock range—a much smaller portion of the stock is expected to be impacted. Thus, while we considered and authorize the instances of incidental take of these species shown in table 11, the number of individuals that would be incidentally taken by the planned activities will, in fact, be substantially lower than the authorized instances of take, and less than one third of the stock abundance for each of these species. We base the small numbers determination on the number of individuals taken versus the number of instances of take, as is appropriate when the information is available.

Based on the analysis contained herein of the planned activity (including the required mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks will not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Classification

Endangered Species Act

Section 7(a)(2) of the ESA of 1973 (ESA; 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of ITAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species, in this case with the NMFS West Coast Region.

NMFS is authorizing a limited amount of take, by Level B harassment (5–23 annually, 70 over the course of the 5-year rule), of Guadalupe fur seals, which are listed as Threatened under the ESA. On December 20, 2023, NMFS' West Coast Regional Office concurred with OPR's determination that USSF's planned activities are consistent with those addressed by the region's February 15, 2019, letter of concurrence for the current LOA, and are not likely to adversely affect the Guadalupe fur seal.

National Marine Sanctuaries Act

Federal agency actions that are likely to injure national marine sanctuary resources are subject to consultation with the Office of National Marine Sanctuaries (ONMS) under section 304(d) of the National Marine Sanctuaries Act (NMSA). While rocket and missile launches do not occur in national marine sanctuary waters,

depending on the direction of a given launch, rockets and missiles may cross over the Channel Islands National Marine Sanctuary. NMFS, in coordination with NOAA's Office of National Marine Sanctuaries, determined that consultation under the NMSA is not warranted.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must evaluate our proposed action (*i.e.,* the promulgation of regulations and subsequent issuance of incidental take authorization) and alternatives with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 of the Companion Manual for NAO 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that this action qualifies to be categorically excluded from further NEPA review.

Executive Order 12866

The Office of Management and Budget has determined that this rule is not significant for purposes of Executive Order 12866.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), 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 factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

Waiver of Delay in Effective Date

The Assistant Administrator for Fisheries has determined that there is a sufficient basis under the Administrative Procedure Act (APA) to waive the 30-day delay in the effective date of the measures contained in the final rule. Section 553 of the APA provides that the required publication or service of a substantive rule shall be made not less than 30 days before its effective date with certain exceptions, including (1) for a substantive rule that relieves a restriction or (2) when the agency finds and provides good cause for foregoing delayed effectiveness (5 U.S.C 553(d)(1), (d)(3)). Here, the issuance of regulations under section 101(a)(5)(A) of the MMPA relieves the statutory prohibition on the taking of marine mammals, specifically, the incidental taking of marine mammals associated with USSF's launches and supporting activities.

The waiver of the 30-day delay of the effective date of the final rule will ensure that the MMPA final rule and LOAs are in place by the time the current authorizations expire. Any delay in effectiveness of the final rule would result in either: (1) A suspension of planned launches and supporting activities, some of which are military readiness activities; or (2) the USSF's non-compliance with the MMPA (should the USSF conduct launches and supporting activities without LOAs, resulting in unauthorized takes of marine mammals). Moreover, USSF is ready to implement the regulations immediately. For these reasons, NMFS finds good cause to waive the 30-day delay in the effective date. In addition, the rule together with the LOA authorizes incidental take of marine mammals that would otherwise be prohibited under the statute. Therefore, by granting an exception to the USSF, the rule relieves restrictions under the MMPA, which provides a separate basis for waiving the 30-day effective date for the rule under section 553(d)(1) of the APA.

List of Subjects in 50 CFR Part 217

Exports, Fish, Imports, Marine mammals, Reporting and recordkeeping requirements, Transportation.

Dated: April 4, 2024.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, NOAA amends 50 CFR part 217 as follows:

PART 217—REGULATIONS GOVERNING THE TAKE OF MARINE MAMMALS INCIDENTAL TO SPECIFIED ACTIVITIES

■ 1. The authority citation for part 217 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.,* unless otherwise noted.

■ 2. Revise subpart G to read as follows:

Subpart G—Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to U.S. Space Force Launches and Operations at Vandenberg Space Force Base, California

Sec.

§ 217.60 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the United States Space Force (USSF) and those persons it authorizes to conduct activities on its behalf, for the taking of marine mammals that occurs in the areas outlined in paragraph (b) of this section incidental to rocket and missile launches and supporting operations.

(b) The incidental taking of marine mammals under this subpart may be authorized in a Letter of Authorization (LOA) only for activities originating at Vandenberg Space Force Base (VSFB).

§ 217.61 Effective dates.

(a) Regulations in this subpart are effective from April 10, 2024, through April 10, 2029.

(b) [Reserved]

§ 217.62 Permissible methods of taking.

(a) Under an LOA issued pursuant to § 216.106 of this chapter and § 217.66 or § 217.67, the Holder (hereinafter the USSF) may incidentally, but not intentionally, take marine mammals by Level B harassment, as described in § 217.60(a) and (b), provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the appropriate LOA.

(b) The incidental take of marine mammals by the activities listed in § 217.60 is limited to the following species and stocks:

TABLE 1 TO § 217.62(b)

Species	Stock
California sea lion	United States.
Northern fur seal	California.
Guadalupe fur seal ...	Mexico.
Steller sea lion	Eastern.
Harbor seal	California.
Northern elephant seal.	California Breeding.

§ 217.63 Prohibitions.

(a) Except for takings contemplated in § 217.62 and authorized by a LOA issued under § 216.106 of this chapter and §§ 217.66 and 217.67, it shall be unlawful for any person to do any of the following in connection with the activities listed in § 217.60:

(1) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or a LOA issued under § 216.106 of this chapter and § 217.66 or § 217.67;

(2) Take any marine mammal species or stock not specified in this subpart or such LOAs;

(3) Take any marine mammal specified in this subpart or such LOAs in any manner other than as specified; or

(4) Take a marine mammal specified in this subpart or such LOAs if NMFS determines after notice and comment that the taking allowed for one or more activities under 16 U.S.C. 1371(a)(5)(A) is having or may have more than a negligible impact on the species or stocks of such marine mammal.

(b) [Reserved]

§ 217.64 Mitigation requirements.

(a) When conducting the activities identified in § 217.60(a) and (b), the mitigation measures contained in any LOA issued under § 216.106 of this chapter and § 217.66 or § 217.67 must be implemented. These mitigation measures include (but are not limited to):

(1) USSF must provide pupping information to launch proponents at the earliest possible stage in the launch planning process and direct launch proponents to, if practicable, avoid scheduling launches during pupping seasons on VSFB from 1 March to 30 April and on the Northern Channel Islands from 1 June–31 July. If practicable, rocket launches predicted to produce a sonic boom on the Northern Channel Islands >3 pounds per square foot (psf) from 1 June–31 July will be scheduled to coincide with tides in excess of +1.0 ft (0.3 m), with an objective to do so at least 50 percent of the time.

(2) For manned flight operations, aircraft must use approved routes for testing and evaluation. Manned aircraft must also remain outside of a 1,000-ft (305 m) buffer around pinniped rookeries and haul-out sites (except in emergencies such as law enforcement response or Search and Rescue operations, and with a reduced, 500-ft (152 m) buffer at Small Haul-out 1).

(3) Unscrewed aerial systems (UAS) classes 0–2 must maintain a minimum altitude of 300 ft (91 m) over all known marine mammal haulouts when marine mammals are present, except at take-off and landing. Class 3 must maintain a minimum altitude of 500 ft (152 m), except at take-off and landing. UAS classes 4 and 5 only operate from the VSFB airfield and must maintain a minimum altitude of 1,000 ft (305 m) over marine mammal haulouts except at take-off and landing. USSF must not fly class 4 or 5 UAS below 1,000 ft (305 m) over haulouts.

(b) [Reserved]

§ 217.65 Requirements for monitoring and reporting.

(a) Monitoring at VSFB and NCI must be conducted by at least one NMFS-approved Protected Species Observer (PSO) trained in marine mammal science. PSOs must have demonstrated proficiency in the identification of all age and sex classes of all marine mammal species that occur at VSFB and on Northern Channel Islands (NCI). They must be knowledgeable of approved count methodology and have experience in observing pinniped behavior, especially that due to human disturbances.

(b) In the event that the PSO requirements described in paragraph (a) of this section cannot be met (*e.g.,* access is prohibited due to safety concerns), daylight or nighttime video monitoring must be used in lieu of PSO monitoring. In certain circumstances where the daylight or nighttime video monitoring is also not possible (*e.g.,* USSF is unable to access a monitoring site due to road conditions or human safety concerns), USSF must notify NMFS.

(c) At VSFB, USSF must conduct marine mammal monitoring and take acoustic measurements for all new rockets, for rockets (existing and new) launched from new facilities, and for larger or louder rockets (including those with new launch proponents) than those that have been previously launched from VSFB during their first three launches and for the first three launches from any new facilities during March through July.

(1) For launches that occur during the harbor seal pupping season (March 1 through June 30) or when higher numbers of California sea lions are present (June 1 through July 31), monitoring must be conducted by at least one NMFS-approved PSO trained in marine mammal science.

(2) When launch monitoring is required, monitoring must begin at least 72 hours prior to the launch and continue through at least 48 hours after the launch. Monitoring must include multiple surveys each day, with a minimum of four surveys per day.

(3) For launches within the harbor seal pupping season, USSF must conduct a follow-up survey of pups.

(4) For launches that occur during daylight, USSF must make time-lapse video recordings to capture the reactions of pinnipeds to each launch. For launches that occur at night, USSF must employ night video monitoring, when feasible.

(5) When possible, PSOs must record: species, number, general behavior, presence and number of pups, age class, gender, and reaction to launch noise, or to natural or other human-caused disturbances. PSOs must also record environmental conditions, including visibility, air temperature, clouds, wind speed and direction, tides, and swell height and direction.

(d) USSF must conduct sonic boom modeling prior to the first three small or medium rocket launches from new launch proponents or at new launch facilities, and all heavy or super-heavy rocket launches.

(e) USSF must conduct marine mammal monitoring and take acoustic measurements at the NCI if the sonic boom model indicates that pressures from a boom will reach or exceed 7 psf from 1 January through 28 February, 5 psf from 1 March through 31 July, or 7 psf from 1 August through 30 September. No monitoring is required on NCI from 1 October through 31 December.

(1) The monitoring site must be selected based upon the model results, prioritizing a significant haulout site on one of the islands where the maximum sound pressures are expected to occur.

(2) USSF must estimate the number of animals on the monitored beach and record their reactions to the launch noise and conduct more focused monitoring on a smaller subset or focal group.

(3) Monitoring must commence at least 72 hours prior to the launch, during the launch and at least 48 hours after the launch, unless no sonic boom is detected by the monitors and/or by the acoustic recording equipment, at which time monitoring may be stopped.

(4) For launches that occur in darkness, USSF must use night vision equipment.

(5) Monitoring for each launch must include multiple surveys each day that record, when possible: species, number, general behavior, presence of pups, age class, gender, and reaction to sonic booms or natural or human-caused disturbances.

(6) USSF must collect photo and/or video recordings for daylight launches

when feasible, and if the launch occurs in darkness night vision equipment will be used.

(7) USSF must record environmental conditions, including visibility, air temperature, clouds, wind speed and direction, tides, and swell height and direction.

(f) USSF must continue to test equipment and emerging technologies, including but not limited to night vision cameras, newer models of remote video cameras and other means of remote monitoring at both VSFB and on the NCI.

(g) USSF must evaluate UAS based or space-based technologies that become available for suitability, practicability, and for any advantage that remote sensing may provide to existing monitoring approaches.

(h) USSF must monitor marine mammals during the first three launches of the missiles for the new Ground Based Strategic Defense program during the months of March through July across the 5-year duration of this subpart.

(1) When launch monitoring is required, monitoring must include multiple surveys each day, with a minimum of four surveys per day.

(2) When possible, PSOs must record: species, number, general behavior, presence and number of pups, age class, gender, and reaction to launch noise, or to natural or other human-caused disturbances. PSOs must also record environmental conditions, including visibility, air temperature, clouds, wind speed and direction, tides, and swell height and direction.

(i) USSF must conduct semi-monthly surveys (two surveys per month) to monitor the abundance, distribution, and status of pinnipeds at VSFB. Whenever possible, these surveys will be timed to coincide with the lowest afternoon tides of each month when the greatest numbers of animals are usually hauled out. If a VSFB or area closure precludes monitoring on a given day, USSF must monitor on the next best day.

(1) PSOs must gather the following data at each site: species, number, general behavior, presence and number of pups, age class, gender, and any reactions to natural or human-caused disturbances. PSOs must also record environmental conditions, including visibility, air temperature, clouds, wind speed and direction, tides, and swell height and direction.

(2) [Reserved]

(j) USSF must submit an annual report each year to NMFS Office of Protected Resources and West Coast Region on March 1st of each year that describes all activities and monitoring for the specified activities during that year. This includes launch monitoring information in paragraphs (j)(1) through (3) of this section for each launch where monitoring is required or conducted. The annual reports must also include a summary of the documented numbers of instances of harassment incidental to the specified activities, including non-launch activities (*e.g.,* takes incidental to aircraft or helicopter operations observed during the semi-monthly surveys). Annual reports must also include the results of the semi-monthly sentinel marine mammal monitoring described in paragraph (i) of this section.

(1) Launch information, including:

(i) Date(s) and time(s) of the launch (and sonic boom, if applicable); and

(ii) Number(s), type(s), and location(s) of rockets or missiles launched;

(2) Monitoring program design; and

(3) Results of the monitoring program, including, but not necessarily limited to:

(i) Date(s) and location(s) of marine mammal monitoring;

(ii) Number of animals observed, by species, on the haulout prior to commencement of the launch or recovery;

(iii) General behavior and, if possible, age (including presence and number of pups) and sex class of pinnipeds hauled out prior to the launch or recovery;

(iv) Number of animals, by species, age, and sex class that responded at a level indicative of harassment. Harassment is characterized by:

(A) Movements in response to the source of disturbance, ranging from short withdrawals at least twice the animal's body length to longer retreats over the beach, or if already moving a change of direction of greater than 90 degrees; or

(B) All retreats (flushes) to the water;

(v) Number of animals, by species, age, and sex class that entered the water, the length of time the animal(s) remained off the haulout, and any behavioral responses by pinnipeds that were likely in response to the specified activities, including in response to launch noise or a sonic boom;

(vi) Environmental conditions including visibility, air temperature, clouds, wind speed and direction, tides, and swell height and direction; and

(vii) Results of acoustic monitoring, including the following:

(A) Recorded sound levels associated with the launch (in SEL, SPL_{peak}, and SPL_{rms});

(B) Recorded sound levels associated with the sonic boom (if applicable), in psf; and

(C) The estimated distance of the recorder to the launch site and the distance of the closest animals to the launch site.

(k) USSF must submit a final, comprehensive 5-year report to NMFS Office of Protected Resources. This report must:

(1) Summarize the activities undertaken and the results reported in all annual reports;

(2) Assess the impacts at each of the major rookeries; and

(3) Assess the cumulative impacts on pinnipeds and other marine mammals from the activities specified in § 217.60(a) and (b).

(l) If the activity identified in § 217.60(a) likely resulted in the take of marine mammals not identified in § 217.62, then the USSF must notify the NMFS Office of Protected Resources and the NMFS West Coast Region stranding coordinator within 24 hours of the discovery of the take.

(m) If real-time monitoring during a launch shows that the activity identified in § 217.60(a) is reasonably likely to have resulted in the mortality or injury of any marine mammal, USSF must notify NMFS within 24 hours (or next business day). NMFS and USSF must then jointly review the launch procedure and the mitigation requirements and make appropriate changes through the adaptive management process, as necessary and before any subsequent launches of rockets and missiles with similar or greater sound fields and/or sonic boom pressure levels.

§ 217.66 Letters of Authorization.

(a) To incidentally take marine mammals pursuant to this subpart, the USSF must apply for and obtain an LOA in accordance with § 216.106 of this chapter.

(b) An LOA, unless suspended or revoked, may be effective for a period of time not to exceed expiration of this subpart.

(c) If an LOA expires prior to the expiration date of this subpart, the USSF may apply for and obtain a renewal LOA.

(d) In the event of projected changes to the activity or to mitigation, monitoring, or reporting (excluding changes made pursuant to the adaptive management provision of § 217.67(c)(1) required by an LOA, USSF must apply for and obtain a modification of the LOA as described in § 217.67.

(e) Each LOA will set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact (*i.e.,* mitigation) on the species and its habitat; and

(3) Requirements for monitoring and reporting.

(f) Issuance of the LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under this subpart.

(g) Notice of issuance or denial of a LOA shall be published in the **Federal Register** within 30 days of a determination.

§ 217.67 Renewals and modifications of Letter of Authorization.

(a) A LOA issued under § 216.106 of this chapter and § 217.66 for the activity identified in § 217.60(a) and (b) shall be modified upon request by USSF, provided that:

(1) The specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for this subpart (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section); and

(2) NMFS determines that the mitigation, monitoring, and reporting measures required by the previous LOA under this subpart were implemented.

(b) For LOA modification or renewal requests by the applicant that include changes to the activity or the mitigation, monitoring, or reporting measures (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section) that do not change the findings made for this subpart or that result in no more than a minor change in the total estimated number of takes (or distribution by species or stock or years), NMFS may publish a notice of proposed changes to the LOA in the **Federal Register**, including the associated analysis of the change, and solicit public comment before issuing the LOA.

(c) An LOA issued under § 216.106 of this chapter and § 217.66 for the activity identified in § 217.60(a) and (b) may be modified by NMFS under the following circumstances:

(1) After consulting with the USSF regarding the practicability of the modifications, NMFS, through adaptive management, may modify (including adding or removing measures) the existing mitigation, monitoring, or reporting measures if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring.

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA include:

(A) Results from the USSF's monitoring from the previous year(s);

(B) Results from other marine mammal and/or sound research or studies; or

(C) Any information that reveals marine mammals may have been taken in a manner, extent or number not authorized by this subpart or a subsequent LOA.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are more than minor, NMFS will publish a notice of the proposed changes to the LOA in the **Federal Register** and solicit public comment.

(2) If NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in LOAs issued pursuant to § 216.106 of this chapter and § 217.62, an LOA may be modified without prior notice or opportunity for public comment. Notice would be published in the **Federal Register** within 30 days of the action.

§§ 217.68–217.69 [Reserved]

[FR Doc. 2024–07559 Filed 4–9–24; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 89, No. 70
Wednesday, April 10, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

[Docket ID: OPM–2024–0006]

RIN 3206–AO68

Prevailing Rate Systems; Abolishment of Frederick, Maryland, as a Nonappropriated Fund Federal Wage System Wage Area

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is proposing a rule to abolish the Frederick, Maryland, nonappropriated fund (NAF) Federal Wage System (FWS) wage area and define Frederick County, MD, to the Anne Arundel, MD, NAF FWS wage area, and Berkeley County, West Virginia, to the Washington, DC, NAF FWS wage area. These changes are necessary because NAF FWS employment in the survey area is now below the minimum criterion of 26 wage employees to maintain a wage area, and the local activities no longer have the capability to conduct local wage surveys.

DATES: Send comments on or before May 10, 2024.

ADDRESSES: You may submit comments, identified by docket number and/or Regulation Identifier Number (RIN) and title, by the following method:

- *Federal Rulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.

All comments received must include the agency name and docket number or RIN for this document. The general policy for comments from members of the public is to make them available for public viewing at *https://www.regulations.gov* without change, including any personal identifiers or contact information. However, OPM retains discretion to redact personal or sensitive information from comments before they are posted.

FOR FURTHER INFORMATION CONTACT: Ana Paunoiu, by telephone at (202) 606–2858 or by email at *pay-leave-policy@opm.gov.*

SUPPLEMENTARY INFORMATION: Under 5 CFR 532.219, OPM may establish an NAF wage area when there are a minimum of 26 NAF wage employees in the survey area, a local activity has the capability to host annual local wage surveys, and the survey area has at least 1,800 private enterprise employees in establishments within survey specifications. The Frederick, Maryland, NAF FWS wage area is presently composed of one survey county, Frederick County, MD, and one area of application county: Berkeley County, WV. The Department of Defense (DOD) notified OPM that there has been a continuing decline of NAF FWS employment in the survey area and the local activities no longer have the capability to conduct local wage surveys. Currently, 15 DOD NAF FWS employees work in Frederick County.

Since Berkeley County, WV, will have continuing NAF employment and does not meet the regulatory criteria under 5 CFR 532.219 to be a separate survey area, it must be defined as an area of application to another wage area. Section 532.219 lists the regulatory criteria OPM considers when defining FWS wage area boundaries. This regulation allows consideration of the following criteria: proximity of largest activity in each county, transportation facilities and commuting patterns, and similarities of the counties in overall population, private employment in major industry categories, and kinds and sizes of private industrial establishments.

In selecting a wage area to which Frederick County, MD, should be redefined, proximity favors the Anne Arundel, MD, NAF wage area. All other criteria are inconclusive. Based on these findings, OPM is defining Frederick County as an area of application to the Anne Arundel NAF wage area.

In selecting a wage area to which Berkeley County, WV, should be redefined, proximity favors the Washington, DC, NAF wage area. All other criteria are indeterminate. Based on these findings, OPM is defining Berkeley County as an area of application to the Washington, DC, NAF wage area.

The Anne Arundel wage area would consist of one survey county (Anne Arundel County, MD), one area of application city (Baltimore City, MD), and 2 area of application counties (Baltimore and Frederick Counties, MD).

The Washington, DC, wage area would consist of one survey county (Washington, DC) and one area of application county (Berkeley County, WV).

The Federal Prevailing Rate Advisory Committee, the national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, recommended these changes by consensus. These changes would be effective on the first day of the first applicable pay period beginning on or after 30 days following publication of the final regulations.

Expected Impact of This Rule

Section 5343 of title 5, U.S. Code, provides OPM with the authority and responsibility to define the boundaries of NAF FWS wage areas. Any changes in wage area definitions can have the long-term effect of increasing pay for Federal employees in affected locations. OPM expects this rulemaking to impact approximately 20 NAF FWS employees. Considering the small number of employees affected, OPM does not anticipate that this proposed rule will substantially impact local economies or have a large impact in local labor markets. However, OPM is requesting comment in this rulemaking regarding the impact. As this and future wage area changes may impact higher volumes of employees in geographical areas and could rise to the level of impacting local labor markets, OPM will continue to study the implications of such impacts in this or future rules as needed.

Regulatory Review

OPM has examined the impact of this rulemaking as required by Executive Orders 12866, 13563, and 14094, which 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). OMB has determined that this rulemaking is not a ''significant regulatory action'' under section 3(f) of

Executive Order 12866, as amended by Executive Order 14094.

Regulatory Flexibility Act

The Director of OPM certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities.

Federalism

OPM has examined this rulemaking in accordance with Executive Order 13132, Federalism, and has determined that this rule will not have any negative impact on the rights, roles and responsibilities of State, local, or tribal governments.

Civil Justice Reform

This rulemaking meets the applicable standard set forth in Executive Order 12988.

Unfunded Mandates Act of 1995

This rulemaking will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Paperwork Reduction Act

This rulemaking does not impose any reporting or record-keeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

Kayyonne Marston,

Federal Register Liaison.

Accordingly, OPM is proposing to amend 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

■ 1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

■ 2. In appendix D to subpart B, amend the table by revising the wage area listing for the District of Columbia and the State of Maryland to read as follows:

Appendix D to Subpart B of Part 532—Nonappropriated Fund Wage and Survey Areas

* * * * *

Definitions of Wage Areas and Wage Area Survey Areas

* * * * *

DISTRICT OF COLUMBIA

Washington, DC

Survey Area

District of Columbia:
Washington, DC

Area of Application. Survey area plus:

West Virginia:
Berkeley

* * * * *

MARYLAND

Anne Arundel

Survey Area

Maryland:
Anne Arundel

Area of Application. Survey area plus:

Maryland (city):
Baltimore
Maryland (counties):
Baltimore
Frederick

Charles-St. Mary's

Survey Area

Maryland:
Charles
St. Mary's

Area of Application. Survey area plus:

Maryland:
Calvert
Virginia:
King George

Harford

Survey Area

Maryland:
Harford

Area of Application. Survey area plus:

Maryland:
Cecil

Montgomery-Prince George's

Survey Area

Maryland:
Montgomery
Prince George's

Area of Application. Survey area.

* * * * *

[FR Doc. 2024–07530 Filed 4–9–24; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 66

[Doc. No. AMS–FTPP–23–0019]

National Bioengineered Food Disclosure Standard; Request for Information on Electronic and Digital Link Disclosures

AGENCY: Agricultural Marketing Service (AMS); Department of Agriculture (USDA).

ACTION: Notice; request for information.

SUMMARY: The Agricultural Marketing Service of the USDA is soliciting information about potential amendments to the electronic or digital link disclosure option as it pertains to the National Bioengineered Food Disclosure Standard (Standard).

DATES: Comments must be received by June 10, 2024 to be assured of consideration.

ADDRESSES: Interested parties are invited to submit written comments via the internet at *https://www.regulations.gov.* Enter ''AMS–FTPP–23–0019'' in the Search field. Select the Documents tab, then select the 'Comment' button in the list of documents. Comments may also be filed by mail or by fax with the Docket Clerk, 1400 Independence Ave. SW, Room 2069—South, Washington, DC 20250; Fax: (202) 260–8369. All comments submitted in response to this notice, including the identity of individuals or entities submitting comments, will be made available to the public on the internet via *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Kenneth Becker, Research and Rulemaking Branch Chief, Food Disclosure and Labeling Division, Fair Trade Practices Program, Agricultural Marketing Service, U.S. Department of Agriculture, Telephone (202) 570–3661, Email *kenneth.becker@usda.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On July 29, 2016, Public Law 114–216 amended the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*) (amended Act) to require USDA to establish a national, mandatory standard for disclosing any food that is or may be bioengineered (BE). In accordance with the amended Act, USDA published final regulations to implement the Standard on December 21, 2018 (83 FR 65814). The regulations became effective on February 19, 2019, with a mandatory

compliance date of January 1, 2022. Under 7 CFR 66.1, a bioengineered food is a food that—subject to certain factors, conditions, and limitations—contains detectable genetic material that has been modified through *in vitro* recombinant deoxyribonucleic acid (rDNA) techniques and for which the modification could not otherwise be obtained through conventional breeding or found in nature.

The amended Act requires USDA to implement the following three BE food disclosure options: on-package text; on-package symbol; and an electronic or digital link, with the disclosure option to be selected by the food manufacturer. 7 U.S.C. 1639b(b)(2)(D). The amended Act directs USDA to require food manufacturers selecting the electronic or digital link disclosure option to include a telephone number that provides access to the disclosure. 7 U.S.C. 1639b(d)(4). Additionally, the amended Act requires USDA to conduct a study to identify potential technological challenges that may impact whether consumers would have access to the BE food disclosure through electronic or digital disclosure methods prior to promulgating regulations establishing the Standard. 7 U.S.C. 1639b(c)(1). If after reviewing the study, the Secretary determines that consumers, while shopping, would not have sufficient access to the BE food disclosure through electronic or digital disclosure methods, the amended Act requires, after consultation with food retailers and manufacturers, additional and comparable options to access the BE food disclosure be provided. 7 U.S.C. 1639b(c)(4).

As required by the amended Act, AMS conducted a study in 2017. The study identified ''potential technological challenges that may impact whether consumers would have access to the bioengineering disclosure through electronic or digital disclosure methods.'' On September 6, 2017, the results of the study were made publicly available on the AMS website.[1] As described in the December 21, 2018, final rule establishing the standard, upon reviewing the results of the study, and in consideration of public comments on a proposed rule published on May 4, 2018 (83 FR 19860), the Secretary determined consumers would not, at that time, have sufficient access to the BE food disclosure through electronic or digital means under ordinary shopping conditions. 83 FR 65828. In response to the Secretary's determination, and following consultation with food retailers and manufacturers and in consideration of public comments, AMS added a text message disclosure option at 7 CFR 66.108 as an additional and comparable option to access the disclosure. Accordingly, the current regulations provide four different disclosure options for food retailers and manufacturers to disclose the presence of a BE food or BE food ingredient: on-package text; the BE symbol; an electronic or digital link accompanied by a telephone number; and a text message. The requirements for on-package text disclosures are described at 7 CFR 66.102, which mandates that the on-package language must state ''Bioengineered food,'' ''Contains a bioengineered food ingredient,'' or, if multiple BE food ingredients are present, ''Contains bioengineered food ingredients.'' The BE symbol requirements are described at 7 CFR 66.104. The symbol can be found at *https://www.ams.usda.gov/rules-regulations/be/symbols.* The requirements for electronic or digital link disclosure are explained at 7 CFR 66.106, which mandates that the electronic or digital link be accompanied by on-package statements that read, ''Scan here for more food information'' and ''Call 1–000–000–0000 for more food information.'' When accessed, the electronic or digital link product information page must include either the same language requirements of the on-package text disclosure in 7 CFR 66.102 or the symbol disclosure in 7 CFR 66.104. The requirements for the text message option are described at 7 CFR 66.108, which mandates an on-package statement that says ''Text [command word] to [number] for bioengineered food information.'' When the text message disclosure is used, the consumer must receive the BE food disclosure using the same language required for on-package text disclosures, as described at 7 CFR 66.102.

In September 2022, the Federal Court for the Northern District of California issued a decision addressing several claims raised in *Natural Grocers, et al.* v. *Vilsack, et al.* regarding the Standard. The Court found that AMS's action of providing a text message disclosure option (7 CFR 66.108) as an additional and comparable option fell outside of the statutory authority of the amended Act and failed to address the problem of insufficient access to the BE disclosure through the electronic or digital link disclosure option. The Court concluded an additional and comparable disclosure option must be included with the electronic or digital link disclosure (7 CFR 66.106). The Court accordingly ordered that AMS reconsider the requirements in §§ 66.106 and 108.

II. Request for Information

AMS is reevaluating the electronic or digital link disclosure option at 7 CFR 66.106 and is soliciting public input on potential revisions to the electronic or digital link disclosure option as it pertains to the Standard. Commenting parties should submit responses to questions and requests (1) through (8) below and, if available, provide data and other evidence to support any suggested revision. AMS will not consider comments providing recommendations that are not relevant to the questions and requests below.

(1) What are the current challenges associated with consumers accessing information on the BE status of foods by electronic or digital link disclosure in a retail setting?

(2) If a regulated entity chooses to use an electronic or digital link to disclose a BE food, what additional and comparable option should AMS add to the electronic or digital link disclosure option that would be more helpful for consumers? In which location proximate to the electronic or digital link should an additional and comparable option be placed?

(3) Provide information on current smartphone ownership among consumers, if available. Context: AMS is interested in the availability of wireless internet or cellular networks. AMS has found that as of 2021, most Americans (97 percent) owned a cellphone of some kind and smartphone ownership was at 85 percent.[2] In particular, the Pew Research Center found that 89 percent of urban adults, 84 percent of suburban adults, and 80 percent of rural adults in America own a smartphone.[3] The Pew Research Center also found that 61 percent of individuals 65 and older own a smartphone.[4]

(4) Provide information on the availability of broadband in a retail setting, if available. This could include

[1] The ''Study of Electronic or Digital Link Disclosure: A Third-Party Evaluation of Challenges Impacting Access to Bioengineered Food Disclosure,'' was made available to the public on September 6, 2017, at *https://www.ams.usda.gov/reports/study-electronic-or-digital-disclosure.*

[2] Pew Research Center. 2021. Mobile Fact Sheet. Retrieved December 14, 2022, from *https://www.pewresearch.org/internet/fact-sheet/mobile/.*

[3] Pew Research Center. 2021. Some digital divides persist between rural, urban, and suburban America. Retrieved December 15, 2022, from *https://www.pewresearch.org/fact-tank/2021/08/19/some-digital-divides-persist-between-rural-urban-and-suburban-america/.*

[4] Pew Research Center. 2022. Share of those 65 and older who are tech users has grown in the past decade. Retrieved January 17, 2023, from *https://www.pewresearch.org/fact-tank/2022/01/13/share-of-those-65-and-older-who-are-tech-users-has-grown-in-the-past-decade/.*

broadband that is offered directly to consumers, or the accessibility to other private networks while in a retail setting.

(5) Provide current information on the consumer usage of BE or other electronic or digital link disclosures in a retail setting. Context: AMS is trying to determine if accessibility to information through electronic and digital disclosure in retail settings is common; responses can include use in restaurants or related retail sectors, in addition to grocery.

(6) Explain any advantages and benefits to using the electronic or digital link disclosure option.

(7) Provide any information available on the percentage of usage for each of the four current disclosure options. In addition, provide information on how many small businesses use each of the four disclosure options. Context: AMS evaluates the costs that rulemaking would impose on regulated entities according to each type of disclosure option and is seeking additional data regarding how many products in the marketplace use each of the four currently available options.

(8) How long does it take on average to update label art, print new labels, and deploy new labels to production lines? How frequently are labels reordered and label inventory updated? Is there any standard cycle for updating retail product labels? How frequently is product inventory updated at retail? What is the preferred optimum compliance period for incorporating new mandatory disclosure information into products for retail?

Authority: 7 U.S.C. 1621 *et seq.*

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2024–07592 Filed 4–9–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–0999; Project Identifier MCAI–2023–01262–T]

RIN 2120–AA64

Airworthiness Directives; Dassault Aviation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Dassault Aviation Model FALCON 7X airplanes. This proposed AD was prompted by a determination that certain left-hand (LH) and right-hand (RH) pylon bleed air leak detectors (BALDs) might be defective, due to incorrect manufacturing processes and incomplete acceptance test procedures. This proposed AD would require a one-time operational check of affected parts and, depending on findings, accomplishment of applicable corrective action, and would limit the installation of affected parts under certain conditions, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). 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 May 28, 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–2024–0999; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For material that is proposed for IBR in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.* It is also available at *regulations.gov* under Docket No. FAA–2024–0999.
- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 206–231–3226; email: *tom.rodriguez@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2024–0999; Project Identifier MCAI–2023–01262–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Tom Rodriguez, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 206–231–3226; email: *tom.rodriguez@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European

Union, has issued EASA AD 2023–0216, dated December 18, 2023 (EASA AD 2023–0216) (also referred to as the MCAI), to correct an unsafe condition for all Dassault Aviation Model FALCON 7X airplanes. The MCAI states that certain pylon BALDs might be defective, due to incorrect manufacturing processes and incomplete acceptance test procedures. The presence of defective LH and RH pylon BALDs could lead to undetected pylon overheat, possibly resulting in structural degradation or uncontrolled fire.

The FAA is proposing this AD to address the unsafe condition on these products.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2024–0999.

Related Service Information Under 1 CFR Part 51

EASA AD 2023–0216 specifies procedures for a one-time operational check of affected parts, including an inspection of the routing of the rear and front BALD loops for interference with the aircraft structure between two grommets, an inspection of the BALD loops for overheating and burn marks, an inspection of the area surrounding each test point for possible interference between the hot air gun and the temperature-sensitive piping and harnesses, a test of the BALD loops with a wide blower nozzle for a certain CAS message, and a test of the BALD loops with a narrow blower nozzle for a certain CAS message; and, depending on findings, accomplishment of applicable corrective action including replacing defective BALD loops. EASA AD 2023–0216 also provides conditions for installation of affected RH and LH pylon BALDs. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

FAA's Determination

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2023–0216 described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2023–0216 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2023–0216 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2023–0216 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2023–0216. Service information required by EASA AD 2023–0216 for compliance will be available at *regulations.gov* under Docket No. FAA–2024–0999 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 150 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
10 work-hours × $85 per hour = $850	$602	$1,452	$217,800

The FAA estimates the following costs to do any necessary on-condition action that would be required based on the results of any required actions. The FAA has no way of determining the number of aircraft that might need this on-condition action:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
10 work-hours × $85 per hour = $850	$1,661	$2,511

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

Authority for This Rulemaking

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

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil

aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Dassault Aviation: Docket No. FAA–2024–0999; Project Identifier MCAI–2023–01262–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by May 28, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Dassault Aviation Model FALCON 7X airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 36, Pneumatic.

(e) Unsafe Condition

This AD was prompted by a determination that certain left-hand (LH) and right-hand (RH) pylon bleed air leak detectors (BALDs) might be defective, due to incorrect manufacturing processes and incomplete acceptance test procedures. The FAA is issuing this AD to address the possible presence of defective LH and RH pylon BALDs. The unsafe condition, if not addressed, could result in undetected pylon overheat, possibly resulting in structural degradation or uncontrolled fire.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2023–0216, dated December 18, 2023 (EASA AD 2023–0216).

(h) Exceptions to EASA AD 2023–0216

(1) Where EASA AD 2023–0216 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where the group definitions in EASA AD 2023–0216 specify ''the SB,'' this AD requires replacing that text with ''Dassault Service Bulletin 7X–572, Erratum, dated October 24, 2023.''

(3) Where the service information referenced in EASA AD 2023–0216 refers to ''suspicious traces,'' this AD requires replacing that text with ''burn marks or signs of overheating.''

(4) Where EASA AD 2023–0216 refers to ''any discrepancy,'' this AD requires replacing that text with ''any routing interference, burn marks, signs of overheating, or any specified CAS message that does not show on a Primary Display Unit (PDU) during testing.''

(5) This AD does not adopt the ''Remarks'' section of EASA AD 2023–0216.

(i) Additional AD Provisions

The following provisions also apply to this AD:

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

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or EASA; or Dassault Aviation's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(j) Additional Information

For more information about this AD, contact Tom Rodriguez, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 206–231–3226; email: *tom.rodriguez@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2023–0216, dated December 18, 2023.

(ii) [Reserved]

(3) For EASA AD 2023–0216, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this EASA AD on the EASA website at *ad.easa.europa.eu.*

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

(5) You may view this material 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 April 4, 2024.

Victor Wicklund,

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

[FR Doc. 2024–07563 Filed 4–9–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–1001; Project Identifier MCAI–2023–01129–T]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Airbus SAS Model A350–941 and –1041 airplanes. This proposed AD was prompted by reports that certain engine bleed air system (EBAS) T-Ducts may not conform to the type design due to a quality escape not detected during the manufacturing process on Rolls-Royce Trent XWB–75, Trent XWB–84, and Trent XWB–97 engines. This proposed AD would require replacement of affected EBAS T-Ducts and limit the installation of affected parts under certain conditions, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). 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 May 28, 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–2024–1001; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For material that is proposed for IBR in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.* It is also available at *regulations.gov* under Docket No. FAA–2024–1001.
- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

FOR FURTHER INFORMATION CONTACT: Dat Le, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 516–228–7300; email: *9-avs-nyaco-cos@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–2024–1001; Project Identifier MCAI–2023–01129–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Dat Le, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 516–228–7300; email: *9-avs-nyaco-cos@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2023–0189, dated October 31, 2023 (EASA AD 2023–0189) (also referred to as the MCAI), to correct an unsafe condition for all Airbus SAS Model A350–941 and –1041 airplanes. The MCAI states a sub-supplier to Rolls-Royce for bleed ducts on Trent XWB–75, Trent XWB–84, and Trent XWB–97 engines reported that certain EBAS T-Ducts may not conform to the type design due to a quality escape not detected during the manufacturing process. Affected EBAS T-Ducts have Part Number RR03–11011–001 and serial number listed in the Appendix 1 of Rolls Royce Alert Non-Modification Service Bulletin (NMSB) Trent XWB 36–AK870, dated September 29, 2023.

The FAA is proposing this AD to address cracking of certain EBAS T-Ducts on Rolls-Royce (RR) Trent XWB–75, Trent XWB–84 and Trent XWB–97 engines. The unsafe condition, if not addressed, could result in cracking of the affected part with consequent air leakage, which could result in high energy debris release (uncontained engine rotor failure), an uncontrolled engine fire, and subsequent loss of control of the airplane.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2024–1001.

Related Service Information Under 1 CFR Part 51

EASA AD 2023–0189 specifies procedures for replacement of affected EBAS T-Ducts. EASA AD 2023–0189 also limits the installation of affected parts. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

FAA's Determination

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2023–0189 described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2023–0189 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2023–0189 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2023–0189 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2023–0189. Service information required by EASA AD 2023–0189 for compliance will be available at *regulations.gov* under Docket No. FAA–2024–1001 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 32 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 2 work-hours × $85 per hour = $170	$128,555	Up to $128,725.	Up to $4,119,200.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus SAS: Docket No. FAA–2024–1001; Project Identifier MCAI–2023–01129–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by May 28, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus SAS Model A350–941 and –1041 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 36, Pneumatic.

(e) Unsafe Condition

This AD was prompted by reports that certain engine bleed air system (EBAS) T-Ducts on Rolls-Royce Trent XWB–75, Trent XWB–84, and Trent XWB–97 engines may not conform to the type design due to a quality escape not detected during the manufacturing process. The FAA is issuing this AD to address cracking of certain EBAS T-Ducts on Rolls-Royce (RR) Trent XWB–75, Trent XWB–84 and Trent XWB–97 engines. The unsafe condition, if not addressed, could result in cracking of the affected part with consequent air leakage, which could result in high energy debris release (uncontained engine rotor failure), an uncontrolled engine fire, and subsequent loss of control of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2023–0189, dated October 31, 2023 (EASA AD 2023–0189).

(h) Exceptions to EASA AD 2023–0189

(1) Where EASA AD 2023–0189 refers to its effective date, this AD requires using the effective date of this AD.

(2) This AD does not adopt the ''Remarks'' section of EASA AD 2023–0189.

(3) Where the definition of affected part in EASA AD 2023–0189 specifies ''as listed in the APPENDIX 1 of the NMSB,'' replace that text with ''as listed in the APPENDIX 1 of Rolls-Royce ALERT Non-Modification Service Bulletin TRENT XWB 36–AK870, dated September 29, 2023.''

(i) Special Flight Permit

Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the airplane to a location where an EBAS T-Duct can be replaced, provided only one EBAS T-Ducts requires replacement.

(j) Additional AD Provisions

The following provisions also apply to this AD:

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

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* Except as required by paragraph (j)(2) of this AD, if any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(k) Additional Information

For more information about this AD, contact Dat Le, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 516–228–7300; email: *9-avs-nyaco-cos@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 this AD specifies otherwise.

(i) European Union Aviation Safety Agency (EASA) AD 2023–0189, dated October 31, 2023.

(ii) [Reserved]

(3) For EASA AD 2023–0189, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this EASA AD on the EASA website at *ad.easa.europa.eu.*

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

(5) You may view this material 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 April 4, 2024.

Victor Wicklund,

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

[FR Doc. 2024–07574 Filed 4–9–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–0997; Project Identifier MCAI–2022–01306–R]

RIN 2120–AA64

Airworthiness Directives; Leonardo S.p.a. Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Leonardo S.p.a. Model AB139 and AW139 helicopters. This proposed AD was prompted by multiple reports of cracks found on tail rotor (TR) damper bracket assemblies. This proposed AD would require accomplishing repetitive detailed visual inspections (DVIs) of certain part-numbered TR damper bracket assemblies for corrosion and cracks and, depending on the results, taking corrective action. This proposed AD would also prohibit installing an affected TR damper bracket assembly unless it is new. These actions are specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this NPRM by May 28, 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–2024–0997; 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 EASA material, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *easa.europa.eu.* You may find the EASA material on the EASA website at *ad.easa.europa.eu.*
- You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. The EASA material is also available at *regulations.gov* under Docket No. FAA–2024–0997.

Other Related Service Information: For Leonardo Helicopters service information, contact Leonardo S.p.A., Emanuele Bufano, Head of Airworthiness, Viale G. Agusta 520, 21017 C. Costa di Samarate (Va) Italy; telephone (+39) 0331–225074; fax (+39) 0331–229046; or at *customerportal.leonardocompany.com/en-US/.* You may also view this service information at the FAA contact information under *Material Incorporated by Reference* above.

FOR FURTHER INFORMATION CONTACT: Sungmo Cho, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (781) 238–7241; email: *Sungmo.D.Cho@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–2024–0997; Project Identifier MCAI–2022–01306–R'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing

date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Sungmo Cho, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (781) 238–7241; email: *Sungmo.D.Cho@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, previously issued EASA AD 2022–0154, dated August 1, 2022 (EASA AD 2022–0154) for all serial-numbered Leonardo S.p.A. Model AB139 and AW139 helicopters. EASA stated in AD 2022–0154 that during scheduled inspections, some TR damper bracket assemblies were found cracked and that subsequent investigation revealed that the cracks originated from the outer edges of the TR damper bracket lug bores and were due to stress corrosion. That condition, if not detected and corrected, could lead to fracture of the affected part (TR damper bracket assembly), possibly resulting in failure of the TR damper, and consequent loss of control of the helicopter. Therefore, EASA AD 2022–0154 required repetitive DVIs of the affected part for cracks and corrosion, and, depending on findings, replacing the affected part with a serviceable part.

After EASA AD 2022–0154 was issued, new occurrences were reported on additional serial-numbered and part-numbered TR damper bracket assemblies that were not included in the initial batch of affected parts and it was determined that additional TR damper bracket assemblies must also be inspected. Consequently, EASA issued EASA AD 2022–0205, dated October 4, 2022 (EASA AD 2022–0205), to retain the requirements of EASA AD 2022–0154, which is superseded, expand the definition of ''affected part,'' and require the DVIs for all affected parts. See EASA AD 2022–0205 for additional background information.

The FAA is proposing this AD to detect and address corrosion or cracks on the TR damper bracket assembly. The unsafe condition, if not addressed, could result in an in-flight TR blade loss, unbalance or damage to the tail or other parts of the helicopter, and subsequent loss of control of the helicopter.

Related Service Information Under 1 CFR Part 51

EASA AD 2022–0205 requires repetitive DVIs of the TR damper bracket assembly for cracks and corrosion. Depending on the results of these inspections, EASA AD 2022–0205 requires removing any corrosion, replacing any cracked part or a part which the corrosion cannot be removed with a serviceable part, and reporting any discrepancies to Leonardo. EASA AD 2022–0205 allows installing an affected part on any helicopter, provided it is a serviceable part, which is an affected part that is new. EASA AD 2022–0205 also allows installing any TR damper bracket assembly that is not an affected part as defined within.

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

Other Related Service Information

The FAA also reviewed Leonardo Helicopters Alert Service Bulletin No. 139–724, Revision B, dated September 29, 2022. This service information specifies procedures for inspecting and if necessary, replacing certain part-numbered and serial-numbered TR damper bracket assemblies.

FAA's Determination

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

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2022–0205, described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this proposed AD and except as discussed under ''Differences Between this Proposed AD and EASA AD 2022–0205.''

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2022–0205 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2022–0205 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2022–0205 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2022–0205. Service information referenced in EASA AD 2022–0205 for compliance will be available at *regulations.gov* under Docket No. FAA–2024–0997 after the FAA final rule is published.

Differences Between This Proposed AD and EASA AD 2022–0205

EASA AD 2022–0205 requires reporting certain information to Leonardo, whereas this proposed AD would not.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 126 helicopters of U.S. registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this proposed AD.

A DVI of the TR damper bracket assembly would take approximately 1 work-hour for an estimated cost of $85 per helicopter and up to $10,710 for the U.S. fleet, per inspection cycle.

If required, removing corrosion from the TR damper bracket assembly would take approximately 1 work-hour for an estimated cost of $85 per helicopter.

If required, removing a TR damper bracket assembly and replacing it with a serviceable part would take approximately 8 work-hours and parts would cost approximately $4,540 for an estimated cost of $5,220 per TR damper bracket assembly.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Leonardo S.p.a.: Docket No. FAA–2024–0997; Project Identifier MCAI–2022–01306–R.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by May 28, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Leonardo S.p.a. Model AB139 and AW139 helicopters, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code: 6400, Tail Rotor System.

(e) Unsafe Condition

This AD was prompted by multiple reports of cracks found on tail rotor (TR) damper bracket assemblies. The FAA is issuing this AD to detect and address corrosion or cracks on the TR damper bracket assembly. The unsafe condition, if not addressed, could result in an in-flight TR blade loss, unbalance or damage to the tail or other parts of the helicopter, and subsequent loss of control of the helicopter.

(f) Compliance

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

(g) Requirements

Except as specified in paragraphs (h) and (i) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2022–0205, dated October 4, 2022 (EASA AD 2022–0205).

(h) Exceptions to EASA AD 2022–0205

(1) Where EASA AD 2022–0205 requires compliance in terms of flight hours, this AD requires using hours time-in-service.

(2) Where EASA AD 2022–0205 refers to its effective date and August 15, 2022 (the effective date of EASA AD 2022–0154, dated August 1, 2022), this AD requires using the effective date of this AD.

(3) Where paragraph (4) of EASA AD 2022–0205 states to ''replace the affected part with a serviceable part in accordance with the instructions of section 3 of the ASB;'' for this AD, replace that text with ''remove the affected part, as defined in EASA AD 2022–0205, from service and replace it with a serviceable part, as defined in EASA AD 2022–0205, in accordance with the instructions of section 3 of the ASB.''

(4) Where the service information referenced in paragraph (4) of EASA AD 2022–0205 specifies to perform detailed visual inspections (DVIs) and ''If no cracks are found, but suspected evidences of corrosion signs are found, gently polish the interested area,'' for the purposes of this AD, ''suspected signs of corrosion'' and ''suspected evidences of corrosion signs'' are signs of discoloration, pitting, flaking, or rust stains.

(5) Where the service information referenced in paragraph (4) of EASA AD 2022–0205 specifies to discard certain parts, this AD requires removing those parts from service.

(6) This AD does not require compliance with paragraph (6) of EASA AD 2022–0205.

(7) This AD does not adopt the ''Remarks'' section of EASA AD 2022–0205.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2022–0205 specifies to reporting certain information to the manufacturer, this AD does not include that requirement.

(j) Credit for Previous Actions

This paragraph provides credit for the initial instance of the detailed visual inspections (DVIs) required by paragraph (g) of this AD, for TR damper bracket assemblies identified in Table 1 of EASA AD 2022–0205, if those actions were performed before the effective date of this AD using Leonardo Helicopters Alert Service Bulletin No. 139–724, Revision A, dated September 19, 2022.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in § 39.19. In accordance with § 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 certification office, send it to the attention of the person identified in paragraph (l)(1) of this AD. If sending information directly to the manager of the International Validation Branch, mail it to the address identified in paragraph (l)(1) of this AD or email to: *9-AVS-AIR-730-AMOC@faa.gov.* If mailing information, also submit information by email.

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

(l) Additional Information

(1) For more information about this AD, contact Sungmo Cho, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (781) 238–7241; email: *Sungmo.D.Cho@faa.gov.*

(2) For Leonardo Helicopters service information identified in this AD that is not incorporated by reference, contact Leonardo S.p.A., Emanuele Bufano, Head of Airworthiness, Viale G. Agusta 520, 21017 C. Costa di Samarate (Va) Italy; phone (+39) 0331–225074; fax (+39) 0331–229046; or at *customerportal.leonardocompany.com/en-US/.*

(m) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2022–0205, dated October 4, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0205, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *easa.europa.eu.* You may find the EASA material on the EASA website at *ad.easa.europa.eu.*

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

(5) You may view this 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-locationsoremailfr.inspection@nara.gov.*

Issued on April 2, 2024.

Victor Wicklund,

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

[FR Doc. 2024–07487 Filed 4–9–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[Docket No. USCG–2023–0750]

RIN 1625–AA01

Establish Anchorage Ground; Crims Island Anchorage, Columbia River, Oregon and Washington

AGENCY: Coast Guard, DHS.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Coast Guard is reopening the comment period for the notice of proposed rulemaking (NPRM) entitled ''Establish Anchorage Ground; Crims Island Anchorage, Columbia River, Oregon and Washington,'' published on December 28, 2023. Reopening the comment period will allow additional time for the public to review and submit comments on the proposed rule.

DATES: The comment period for the notice of proposed rulemaking published on December 28, 2023 (88 FR 89648) is reopened. Comments and related material must be submitted to the docket by May 10, 2024.

ADDRESSES: You may submit comments identified by docket number USCG–2023–0750 using the Federal Decision Making Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: For information about this document call or email LT Carlie Gilligan, Sector Columbia River Waterways Management Division, U.S. Coast Guard; telephone 503–240–9319, email *SCRWWM@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

The Coast Guard views public participation as essential to effective rulemaking, and will consider all comments and material received on this notice of proposed rulemaking during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this proposed rule, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision Making Portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2023–0750 in the search box and click ''Search.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this as being available in the docket, find the docket as described in the previous paragraph, and then select ''Supporting & Related Material'' in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the *https://www.regulations.gov* Frequently Asked Questions web page. We review all comments received, but we will only post comments that address the topic of the document. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to *https://www.regulations.gov* will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Public meeting. We are not planning to hold a public meeting but will consider doing so if we determine from public comments that a meeting would be helpful. We would issue a separate **Federal Register** notice to announce the date, time, and location of such a meeting.

Dated: April 4, 2024.

Charles E. Fosse,

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

[FR Doc. 2024–07579 Filed 4–9–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2023–0969]

RIN 1625–AA09

Drawbridge Operation Regulation; Umpqua River, Reedsport, OR

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the name and operating schedule that governs the Central Oregon and Pacific railroad bridge across the Umpqua River, mile 11.5, at Reedsport, OR. Coos Bay Rail Line, the bridge owner, requested to change the name of the bridge to a locally recognized name and to change the current operating schedule due to reduced marine traffic using the waterway. The modified rule would change the name of the bridge, allow the bridge to be maintained in the closed to navigation position and remove the requirement for fog signals at the bridge. We invite your comments on this proposed rulemaking.

DATES: Comments and relate material must reach the Coast Guard on or before May 28, 2024.

ADDRESSES: You may submit comments identified by docket number USCG–2023–0969 using Federal Decision Making Portal at *https://www.regulations.gov.*

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments. This notice of proposed rulemaking with its plain-language, 100 word or less proposed rule summary will be available in this same docket.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Danny McReynolds, Bridge Management Specialist Thirteenth District, Coast Guard; telephone 206–220–7234, email, *d13-smb-d13-bridges@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CBRL Coos Bay Rail Line
CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking (Advance, Supplemental)
§ Section
U.S.C. United States Code

II. Background, Purpose and Legal Basis

The Coos Bay Rail Line (CBRL) owns and operates the Central Oregon and Pacific railroad bridge across the Umpqua River at mile 11.5. The CBRL requested to change the subject bridge name to the Umpqua River railroad bridge, which is a more recognizable local name. The Central Oregon and Pacific railroad bridge will be referred to as the Umpqua River railroad bridge for the rest of this NPRM. Umpqua River railroad bridge is maintained in the open to navigation position. We are proposing to change 33 CFR 117.893(b) to maintain the Umpqua River railroad bridge in the closed to navigation position and open to marine vessels with a minimum of two-hours' advance notice. In the closed to navigation position, the bridge provides 15 feet of vertical clearance above high water. The Umpqua River has experienced a reduction in marine traffic using the waterway while CBRL has experienced an increase in rail traffic that requires the bridge span to be in the closed position. Vessels that regularly request draw openings are two fishing vessels named Pearl J and Pacific Marit. These vessels transit upriver to a repair facility, and after repairs, the vessels transit down river to their normal moorings. The proposed regulation change would allow the Umpqua River railroad bridge to be maintained in the closed to navigation position to marine vessels, and the bridge will open with at least two-hours' notice via the phone number posted on the bridge. The phone number to contact CBRL will be published in the Local Notice to Mariners.

Currently the bridge operates fog signals to warn vessels when the bridge is cycled closed and open during reduced visibility. This proposed regulation change would open the subject bridge on request from mariners, and therefore, the mariner would know the bridge is open and have no need to be warned of the position of the draw during fog or any reduced visibility type of weather.

III. Discussion of Proposed Rule

This proposed rule would amend the operating schedule of the Umpqua River railroad bridge by allowing the bridge to remain in the closed to navigation position and would require two-hours' advance notice for all draw openings. The rule is necessary to balance the needs of the railroad by reducing the need to frequently cycle the draw closed for rail traffic and back open for marine traffic, while still maintaining the reasonable needs of navigation. Over the years the bridge has had multiple owners, but the bridge name in the Code of Federal Regulations has not changed. Changing the bridge name to the proposed name will alleviate the need of a future rule change if the railroad ownership changes. Vessels able to transit under the bridge without an opening may do so at any time.

This regulatory action determination is based on the ability for the Umpqua River railroad bridge to open on signal after the CBRL has received at least two-hours' notice by telephone. The Coast Guard has made this finding understanding that the proposed change allows any vessel that needs a drawbridge opening to transit through the Umpqua River railroad bridge with the proper advance notice during clear visibility or reduced visibility. Changing the position of the draw to be maintained closed to mariners, vice open to mariners, would allow all mariners to know the draw is always closed except when a signal is given to open the draw.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on 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 NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the ability that vessels can still transit the bridge given advanced notice.

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 certifies under 5 U.S.C. 605(b) that this proposed rule would 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 IV.A above this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

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 proposed 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. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed 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 proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this proposed 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 proposed rule promulgates the operating regulations or procedures for drawbridges. Normally such actions are categorically excluded from further review, under paragraph L49, of Chapter 3, Table 3–1 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. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision Making Portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2023–0969 in the search box and click ''Search.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select ''Supporting & Related Material'' in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the *https://www.regulations.gov* Frequently Asked Questions web page. Also, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted, or a final rule is published of any posting or updates to the docket.

We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to *https://www.regulations.gov* will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 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 DHS Delegation No. 00170.1, Revision No. 01.3.

■ 2. Amend § 117.893 by revising paragraph (b) to read as follows:

§ 117.893 Umpqua River.

* * * * *

(b) The draw of the Umpqua River railroad bridge, mile 11.5 at Reedsport, shall open on signal if at least two-hours' notice is given via telephone.

* * * * *

Dated: April 4, 2024.

Charles E. Fosse,

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

[FR Doc. 2024–07578 Filed 4–9–24; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2022–0536; FRL–11829–01–R8]

Air Plan Approval; Wyoming; Revisions to Regional Haze State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Wyoming on December 30, 2022, and supplemented on August 31, 2023, and November 16, 2023, addressing regional haze (Wyoming 2022 SIP revision). The Wyoming 2022 SIP revision replaces Wyoming's previously approved source-specific nitrogen oxide (NO_X) determination for PacifiCorp's Jim Bridger power plant (Jim Bridger) Units 1 and 2 of 0.07 lb/MMBtu for each unit associated with the installation of selective catalytic reduction (SCR) controls to address the long-term strategy. Specifically, the Wyoming 2022 SIP revision finds that conversion from coal-firing to natural gas-firing, together with NO_X emission and heat input limits of 0.12 lb/MMBtu (30-day rolling average), 1,314 tons/year, and 21,900,000 MMBtu/year, respectively, allows for identical reasonable progress during the first planning period as the installation SCR controls. Separately, we are also proposing to approve Wyoming's monthly and annual NO_X and sulfur dioxide (SO_2) emissions limits for Jim Bridger Units 1–4. The EPA is proposing this action pursuant to sections 110 and 169A of the Clean Air Act (CAA).

DATES: *Comments:* Written comments must be received on or before May 10, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2022–0536, to the Federal Rulemaking Portal: *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *https://www.regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

Docket: All documents in the docket are listed in the *https://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically in *https://www.regulations.gov.* Please email or call the person listed in the **FOR FURTHER INFORMATION CONTACT** section if you need to make alternative arrangements for access to the docket.

FOR FURTHER INFORMATION CONTACT: Jaslyn Dobrahner, Air and Radiation Division, EPA, Region 8, Mailcode 8P–ARD, 1595 Wynkoop Street, Denver, Colorado 80202–1129, telephone number: (303) 312–6252, email address: *dobrahner.jaslyn@epa.gov.*

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

I. What action is the EPA proposing?

The Jim Bridger power plant is located in Sweetwater County, Wyoming, and is owned in part, and operated, by PacifiCorp. The power plant is composed of four 530 megawatt (MW) tangentially fired boilers burning pulverized coal for a total net generating capacity of 2,120 MW.

On January 30, 2014, the EPA promulgated a final rule titled, ''Approval, Disapproval and Promulgation of Implementation Plans; State of Wyoming; Regional Haze State Implementation Plan; Federal Implementation Plan for Regional Haze,'' approving, in part, a regional haze SIP revision submitted by the State of Wyoming on January 12, 2011 (2014 final rule).[1] In the 2014 final rule, the EPA approved Wyoming's determination to require low-NO_X burners (LNB) and separated overfire air (SOFA) at Jim Bridger Units 1–4, with

[1] 79 FR 5032 (January 30, 2014).

a NO_X best available retrofit technology (BART) emission limit of 0.26 pounds per million British Thermal Units (lb/MMBtu) (30-day rolling average) for Jim Bridger Units 1–4.[2] The EPA also approved Wyoming's determination to require SCR at Jim Bridger Units 1–4, with a NO_X emission limit of 0.07 lb/MMBtu (30-day rolling average), as part of its long-term strategy.[3]

The EPA is proposing to approve a SIP revision submitted by the State to the EPA on December 30, 2022, and supplemented on August 31, 2023, and November 16, 2023, which will replace the previously approved NO_X emission limit of 0.07 lb/MMBtu (30-day rolling average) at Jim Bridger Units 1 and 2 for Wyoming's long-term strategy.[4] The Wyoming 2022 SIP revision amends the State's previously approved long-term strategy for the first Regional Haze planning period and is requiring Jim Bridger Units 1 and 2 to operate consistent with conversion from coal-firing to natural gas-firing by January 1, 2024, with NO_X emission limits of 0.12 lb/MMBtu (30-day rolling average) and 1,314 tons/year for each unit and a heat input limit of 21,900,000 MMBtu/year per unit. The Wyoming 2022 SIP revision reflects changes to Chapters 7 and 8 of Wyoming's regional haze SIP narrative[5] and incorporates certain conditions of Wyoming air quality permits #P0025809 and #P0036941, some conditions of which were memorialized in a Wyoming court-approved consent decree between Wyoming and PacifiCorp.[6] [7] Ultimately, the Wyoming 2022 SIP revision finds conversion from coal-firing to natural gas-firing, together with NO_X emission and heat input limits, to be sufficient for reasonable progress during the first planning period, and finds the emission limits associated with the installation of SCR controls are no longer required. The State also included NO_X and SO_2 monthly and annual emissions limits for Jim Bridger Units 1–4.[8]

II. Background

A. Requirements of the Clean Air Act and the EPA's Regional Haze Rule

In section 169A of the CAA, Congress created a program for protecting visibility in national parks and wilderness areas. This section of the CAA establishes ''as a national goal the prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas which impairment results from manmade air pollution.'' [9]

The EPA promulgated a rule to address regional haze on July 1, 1999.[10] The Regional Haze Rule revised the existing visibility regulations [11] to integrate provisions addressing regional haze and established a comprehensive visibility protection program for Class I areas. The requirements for regional haze, found at 40 CFR 51.308 and 40 CFR 51.309, are included in the EPA's visibility protection regulations at 40 CFR 51.300 through 40 CFR 51.309.[12]

The CAA requires each state to develop a SIP to meet various air quality requirements, including protection of visibility.[13] Regional haze SIPs must assure reasonable progress toward the national goal of preventing future and remedying existing manmade visibility impairment in Class I areas. A state must submit its SIP and SIP revisions to the EPA for approval.[14] Once approved, a SIP is enforceable by the EPA and citizens under the CAA; that is, the SIP is federally enforceable.

B. Best Available Retrofit Technology (BART)

Section 169A(b)(2) of the CAA requires SIPs to contain such measures as may be necessary to make reasonable progress toward meeting the national visibility goal. Section 169(b)(2)(A) specifies that one such requirement for the first regional haze planning period is for certain categories of existing major stationary sources built between 1962 and 1977 to procure, install, and operate BART as determined by the states through their SIPs. Under the Regional Haze Rule, states (or the EPA, in the promulgation of a federal implementation plan (FIP)) are directed to conduct BART determinations for ''BART-eligible'' sources—typically larger, often uncontrolled, and older stationary sources—that may reasonably be anticipated to cause or contribute to any visibility impairment in a Class I area.[15] States must consider the following five factors in making BART determinations: (1) the costs of compliance; (2) the energy and non-air quality environmental impacts of compliance; (3) any existing pollution control technology in use at the source; (4) the remaining useful life of the source; and (5) the degree of improvement of visibility which may reasonably be anticipated to result from

[2] Wyoming determined that all four units are subject to BART. 77 FR 33022, 33030, 33035 (June 4, 2012).

[3] The BART determination compliance date for all units was March 4, 2019. Long-term strategy determination compliance dates for each include: Unit 1 = December 31, 2022; Unit 2 = December 31, 2021; Unit 3 = December 31, 2015; and Unit 4 = December 31, 2016.

[4] On May 23, 2022, Wyoming submitted a draft SIP revision and requested that the EPA parallel process this revision to their Regional Haze 309(g) first planning period SIP. Parallel processing generally refers to concurrent state and federal proposed rulemaking actions. In this action, however, the state submitted a final SIP revision after the state concluded its state rulemaking action thus we are proposing action on the state's final SIP revision and are not parallel processing the rulemaking.

[5] State of Wyoming, ''Addressing Regional Haze Visibility Protection For The Mandatory Federal Class I Areas Required Under 40 CFR 51.309,'' Revised May 23, 2022 (''Wyoming 2022 SIP revision'').

[6] Consent Decree, *State of Wyoming* v. *PacifiCorp*, Docket No. 2022–CV–200–333, First Judicial District Court, Laramie, Wyoming. (February 14, 2022).

[7] An EPA Administrative Compliance Order On Consent found PacifiCorp in violation of the Wyoming SIP and the Clean Air Act and ordered PacifiCorp to comply, no later than June 9, 2023, with the terms of the Wyoming 2022 SIP revision, based on the requirements found in the February 14, 2022 consent decree. EPA Administrative Compliance Order On Consent, PacifiCorp—Jim Bridger Power Plant, CAA–08–2022–0006 (EPA June 9, 2022).

[8] These limits represent a separate SIP component from Wyoming's long-term strategy analysis and determination. See sections IV.C. and VI.

[9] 42 U.S.C. 7491(a). Areas designated as mandatory Class I Federal areas consist of national parks exceeding 6,000 acres, wilderness areas and national memorial parks exceeding 5,000 acres, and all international parks that were in existence on August 7, 1977. 42 U.S.C. 7472(a). In accordance with section 169A of the CAA, the EPA, in consultation with the Department of Interior, promulgated a list of 156 areas where visibility is identified as an important value. 44 FR 69122 (November 30, 1979). The extent of a mandatory Class I area includes subsequent changes in boundaries, such as park expansions. 42 U.S.C. 7472(a). Although states and tribes may designate as Class I additional areas whose visibility they consider to be an important value, the requirements of the visibility program set forth in section 169A of the CAA apply only to ''mandatory Class I Federal areas.'' Each mandatory Class I Federal area is the responsibility of a ''Federal Land Manager.'' 42 U.S.C. 7602(i). When we use the term ''Class I area'' in this action, we mean a ''mandatory Class I Federal area.''

[10] 64 FR 35714, 35714 (July 1, 1999) (codified at 40 CFR part 51, subpart P).

[11] The EPA had previously promulgated regulations to address visibility impairment in Class I areas that is ''reasonably attributable'' to a single source or small group of sources, *i.e.,* reasonably attributable visibility impairment (RAVI). 45 FR 80084, 80084 (December 2, 1980).

[12] The EPA revised the Regional Haze Rule on January 10, 2017. 82 FR 3078 (January 10, 2017). Under the revised Regional Haze Rule, the requirements 40 CFR 51.308(d) and (e) apply to first implementation period SIP submissions and 51.308(f) applies to submissions for the second and subsequent implementation periods. 82 FR 3087; see also 81 FR 26942, 26952 (May 4, 2016).

[13] 42 U.S.C. 7410(a), 7491, and 7492(a); CAA sections 110(a), 169A, and 169B.

[14] 42 U.S.C. 7491(b)(2); 7410.

[15] 40 CFR 51.308(e). The EPA designed the Guidelines for BART Determinations Under the Regional Haze Rule (Guidelines) 40 CFR appendix Y to part 51 ''to help States and others (1) identify those sources that must comply with the BART requirement, and (2) determine the level of control technology that represents BART for each source.'' Guidelines, section I.A. section II. of the Guidelines describes the four steps to identify BART sources, and section III. explains how to identify BART sources (*i.e.,* sources that are ''subject to BART'').

the use of such technology.[16] Rather than requiring source-specific BART controls, states also have the flexibility to adopt an emissions trading program or other alternative program as long as the alternative will achieve greater reasonable progress toward natural visibility conditions than BART.[17]

One such BART alternative is included in 40 CFR 51.309 and is an option for nine states termed the ''Transport Region States,'' which include Arizona, California, Colorado, Idaho, Nevada, New Mexico, Oregon, Utah, and Wyoming. Transport Region States can adopt regional haze strategies based on recommendations from the Grand Canyon Visibility Transport Commission (GCVTC) for protecting the 16 Class I areas on the Colorado Plateau.[18]

As part of its overall plan for making reasonable progress towards the national visibility goal for the 16 Class I areas, the GCVTC submitted an annex to the EPA, known as the Western SO_2 Backstop Trading Program, containing annual SO_2 emissions reduction milestones and detailed provisions of a backstop trading program to be implemented automatically if measures fail to achieve the SO_2 milestones. The EPA approved the Backstop Trading Program as a BART alternative for SO_2 emissions.[19] Transport Region States' SIPs must also contain any necessary long-term strategy and BART requirements for stationary-source particulate matter (PM) and NO_X emissions.[20]

C. Long-Term Strategy and Reasonable Progress Requirements

In addition to the BART requirements, the CAA's visibility protection provisions also require that states' regional haze SIPs contain a ''long-term (ten to fifteen years) strategy for making reasonable progress toward meeting the national goal. . . .'' [21] The long-term strategy must address regional haze visibility impairment for each mandatory Class I area within the state and for each mandatory Class I area located outside the state that may be affected by emissions from the state. It must include the enforceable emission limitations, compliance schedules, and other measures necessary to achieve the reasonable progress goals.[22] The reasonable progress goals are calculated for each Class I area based on the control measures states have selected by analyzing the four statutory ''reasonable progress'' factors, which are: ''the costs of compliance, the time necessary for compliance, the energy and non-air quality environmental impacts of compliance, and the remaining useful life of any existing source subject to such requirement.'' [23] Thus, the four reasonable progress factors are considered by a state in setting the reasonable progress goal for the first planning period pursuant to § 51.308(d)(1)(i)(A), by virtue of the state having first considered them, and certain other factors listed in § 51.308(d)(3) of the Regional Haze Rule, when deciding what controls are to be included in the long-term strategy. Then, the numerical levels of the reasonable progress goals are the predicted visibility outcome of implementing the long-term strategy in addition to ongoing pollution control programs stemming from other CAA requirements.

Unlike BART determinations, which are required only for the first regional haze planning period SIPs,[24] states are required to submit updates to their long-term strategies, including updated reasonable progress analyses and reasonable progress goals, in the form of SIP revisions by July 31, 2021, and at specific intervals thereafter.[25] In addition, each state must periodically submit a report to the EPA at five-year intervals beginning five years after the submission of the initial regional haze SIP, evaluating the state's progress towards meeting the reasonable progress goals for each Class I area within the state.[26]

By meeting all the requirements of 40 CFR 51.309, including the section 309-specific BART requirements, a Transport Region State can be deemed to be making reasonable progress toward the national goal for the 16 Class I areas on the Colorado Plateau.[27] For stationary sources, these requirements include any necessary long-term strategies for PM and NO_X emissions.[28] Additionally, the State of Wyoming includes several non-Colorado Plateau Class I areas, and was also required to submit a long-term strategy for those Class I areas.[29] Wyoming's 2022 SIP revision addresses emissions reductions approved under its long-term strategy for the first implementation period. As a result, the time period relevant to this rulemaking is the first implementation period.

D. Consultation With Federal Land Managers (FLMs)

The Regional Haze Rule requires that a state consult with Federal Land Managers before adopting and submitting a required SIP or SIP revision. Further, when considering a SIP revision, a state must include in its proposal a description of how it addressed any comments provided by the FLMs.[30]

E. Monitoring, Recordkeeping, and Reporting

The CAA requires that SIPs, including regional haze SIPs, contain elements sufficient to ensure emission limits are practically enforceable. CAA section 110(a)(2) states that the monitoring, recordkeeping, and reporting provisions of states' SIPs must: ''(A) include enforceable emissions limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this chapter; . . . (C) include a program to provide for the enforcement of the measures described in subparagraph (A), and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D of this subchapter; . . . (F) require, as may be prescribed by the Administrator—(i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary

[16] 40 CFR 51.308(e)(1)(ii).

[17] 40 CFR 51.308(e)(2). *WildEarth Guardians* v. *EPA,* 770 F.3d 919, 934 (10th Cir. 2014).

[18] The Colorado Plateau is a high, semi-arid area in southeast Utah, northern Arizona, northwest New Mexico, and western Colorado. The 16 mandatory Class I areas are Grand Canyon National Park, Mount Baldy Wilderness, Petrified Forest National Park, Sycamore Canyon Wilderness, Black Canyon of the Gunnison National Park Wilderness, Flat Tops Wilderness, Maroon Bells Wilderness, Mesa Verde National Park, Weminuche Wilderness, West Elk Wilderness, San Pedro Park Wilderness, Arches National Park, Bryce Canyon National Park, Canyonlands National Park, Capital Reef National Park, and Zion National Park.

[19] 64 FR 35714 (July 1, 1999); 68 FR 33764 (June 5, 2003).

[20] 40 CFR 51.309(d)(4)(vii).

[21] 42 U.S.C. 7491(b)(2)(B).

[22] 40 CFR 51.308(d)(3).

[23] 42 U.S.C. 7491(g)(1); 40 CFR 51.308(d)(1)(i).

[24] Under the Regional Haze Rule, SIPs are due for each regional haze planning or implementation period. The terms ''planning period'' and ''implementation period'' are used interchangeably in this document.

[25] 40 CFR 51.308(f). The deadline for the 2018 SIP revision was moved to 2021. 82 FR 3078 (January 10, 2017); see also 40 CFR 51.308(f). Following the 2021 SIP revision deadline, the next SIP revision is due in 2028. 40 CFR 51.308(f).

[26] Id. § 51.308(g); 51.309(d)(10).

[27] 40 CFR 51.309(a).

[28] 40 CFR 51.309(d)(4)(vii).

[29] 79 FR 5199 (March 3, 2014).

[30] 40 CFR 51.308(i); CAA 169A(d).

steps, by owners or operators of stationary sources to monitor emissions from such sources, (ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and (iii) correlation of such reports by the State agency with any emissions limitations or standards established pursuant to this chapter, which reports shall be available at reasonable times for public inspection.'' [31]

Accordingly, 40 CFR part 51, subpart K, Source Surveillance, requires the SIP to provide for monitoring the status of compliance with the regulations in the SIP, including ''[p]eriodic testing and inspection of stationary sources,'' [32] and ''legally enforceable procedures'' for recordkeeping and reporting.[33] Furthermore, 40 CFR part 51, appendix V, Criteria for Determining the Completeness of Plan Submissions, states in section 2.2 that complete SIPs contain: ''(g) Evidence that the plan contains emission limitations, work practice standards and recordkeeping/reporting requirements, where necessary, to ensure emission levels''; and ''(h) Compliance/enforcement strategies, including how compliance will be determined in practice.'' [34]

III. Wyoming's Regional Haze SIP Submittals

A. Background and Wyoming's Initial Regional Haze SIP

On January 12, 2011, Wyoming submitted its first regional haze SIP pursuant to 40 CFR 51.309. The State determined that NO_X BART for Jim Bridger Units 1–4 was new LNBs with SOFA at an emissions rate of 0.26 lb/MMBtu (30-day rolling average). Compliance with the BART emission limits was required by March 4, 2019, for all four Jim Bridger units.[35] The State also determined that SCR at an emissions rate of 0.07 lb/MMBtu (30-day rolling average) should be installed at all four units as part of the State's long-term strategy to achieve reasonable progress at several Class I areas, and required compliance with the emission limits by December 31, 2022, December 31, 2021, December 31, 2015 and December 31, 2016, for Units 1–4, respectively.[36]

On June 4, 2012, we proposed to approve the State's BART and reasonable progress determinations of 0.26 lb/MMBtu (30-day rolling average) and 0.07 lb/MMBtu (30-day rolling average), respectively, for Units 3 and 4, including the associated dates for compliance with these emissions limits.[37] We subsequently finalized our proposed action for Units 3 and 4.[38]

For Jim Bridger Units 1 and 2, we also proposed to approve the State's BART and reasonable progress determinations of 0.26 lb/MMBtu (30-day rolling average) and 0.07 lb/MMBtu (30-day rolling average), respectively. In the alternative, we proposed to find NO_X BART for Jim Bridger Units 1 and 2 was an emissions limit of 0.07 lb/MMBtu (30-day rolling average), consistent with the installation of LNB/SOFA + SCR, with a compliance deadline of five years.[39] In our final rule, upon consideration of new information and a review of the State's analysis of the BART factors, we found that the source-wide visibility improvement associated with the installation of LNB/SOFA + SCR to be 1.25–1.5 deciviews,[40] while the unit-specific visibility benefits for Units 1 and 2 were 0.27–0.37 deciviews. We found that the average cost-effectiveness of LNB/SOFA + SCR at $2,635 and $3,403/ton of NO_X for Units 1 and 2, respectively, was in line with what we had found to be acceptable in other BART determinations.[41] But we also found that the incremental cost-effectiveness [42] of $7,447 and $8,968/ton NO_X for Units 1 and 2, respectively, was on the high end of what we had found to be reasonable in other determinations.[43] Ultimately, we finalized the State's determination to require LNB/SOFA as BART controls with a corresponding emissions limit of 0.26 lb/MMBtu by March 4, 2019, for Jim Bridger Units 1 and 2, and to require an emissions limit of 0.07 lb/MMBtu (30-day rolling average) with the installation SCR as part of the State's long-term strategy to achieve reasonable progress by 2022 and 2021 for Jim Bridger Units 1 and 2, respectively.[44]

B. November 2017 Regional Haze Progress Report

Under the Regional Haze Rule, states are required to submit progress reports to the EPA documenting actual changes in visibility and emission reductions within the state.[45] The first progress report must be in the form of a SIP revision and is due five years after submittal of the initial regional haze SIP.[46] On November 28, 2017, Wyoming submitted its first progress report, which detailed the progress made toward achieving progress for visibility improvement and declared a determination of adequacy of the State's regional haze plan to meet reasonable progress goals.

In June 2020, we approved Wyoming's progress report SIP revision.[47] We found that between 2002 and 2008, Wyoming's NO_X emissions were reduced by 57,296 tons, a 20 percent reduction during that time period. Additionally, we found that other haze-causing pollutants were also reduced between the same time period.[48] We also found that all the monitoring sites within Wyoming's Class I areas showed improvement in visibility conditions between the baseline (2000–2004) and current (2005–2009) periods on both the 20 percent worst visibility and 20 percent best visibility days. When considering only anthropogenic impairment within the baseline (2000–2004) and most current (2012–2016) periods, all the monitoring sites also showed improvement on the 20 percent most impaired days.[49]

[31] 42 U.S.C. 7410(a)(2)(A), (C), and (F).

[32] 40 CFR 51.212.

[33] Id. § 51.214.

[34] 40 CFR part 51, appendix V.

[35] 79 FR 5221. Installation of new LNB with SOFA (LNB/SOFA) corresponds to a NO_X emissions limit of 0.26 lb/MMBtu (30-day rolling average).

[36] Id. Installation of SCR corresponds to a NO_X emissions limit of 0.07 lb/MMBtu (30-day rolling average).

[37] Id. See also 40 CFR 51.308(e)(1)(iv).

[38] 79 FR 5046, 5221.

[39] 77 FR 33053–54.

[40] Deciview is the unit of measurement on the deciview index scale for quantifying in a standard manner human perceptions of visibility. 40 CFR 51.301.

[41] 79 FR 5040, 5048. Note that the text at 79 FR 5048 misstates the average cost-effectiveness for LNB/SOFA + SCR at Units 1 and 2. The correct figures are stated in Tables 5 and 6 at 79 FR 5040.

[42] The incremental cost-effectiveness of each NO_X control technology on a dollar-per-ton of pollutant removed basis is calculated by dividing the difference of the total annual costs of one control technology compared to the total annual costs of the next most stringent control technology divided by the difference in the reduction in annual NO_X emissions of one control technology compared to the reduction in annual NO_X emissions of the next most stringent control technology. See 40 CFR part 51, appendix Y, IV.D.e.

[43] 79 FR 5040, 5048.

[44] 79 FR 5048, 5049.

[45] 40 CFR 51.309.

[46] Id.

[47] 85 FR 21341 (April 17, 2020) (Proposed rule); 85 FR 38325 (June 26, 2020) (Final rule).

[48] 85 FR 21346.

[49] Id at 21348.

C. May 2020 Regional Haze SIP Revision

On May 14, 2020, Wyoming submitted a proposed revision to its regional haze SIP for the long-term strategy at Jim Bridger Units 1 and 2 (Wyoming's May 2020 SIP revision).[50] The proposed revision included a four-factor reasonable progress analysis to replace the 0.07 lb/MMBtu (30-day rolling average) anticipated NO_X reductions for Jim Bridger Units 1 and 2 as part of Wyoming's long-term strategy to improve visibility during the first planning period. Wyoming's May 2020 SIP revision also included plant-wide (Units 1–4) month-by-month emission limits for NO_X and SO_2 (Table 2) as well as an annual total emissions cap of NO_X and SO_2 for Units 1–4 of 17,500 tons/year.

On January 18, 2022, the EPA proposed to disapprove Wyoming's May 2020 SIP revision.[51] Our proposed disapproval was based on the following: (1) the reasonable cost-effectiveness of the existing reasonable progress control requirements for Jim Bridger Units 1 and 2 (emission limits of 0.07 lb/MMBtu consistent with the installation of SCR); (2) the appreciable visibility improvement estimated to result from compliance with the existing control requirements; and (3) the State's previous determination that the costs of those control requirements were reasonable and necessary to satisfy statutory requirements. The EPA also made the determination that Wyoming's proposed revision to replace its previously approved long-term strategy would not provide for similar or greater emissions reductions or visibility improvement as is required under the Clean Air Act and thus could not propose approval of Wyoming's May 2020 SIP revision. We have not issued a final rule for our proposed disapproval.

D. December 2022 Regional Haze SIP Revision

On December 30, 2022, Wyoming submitted a regional haze SIP revision (Wyoming 2022 SIP revision).[52] [53] The Wyoming 2022 SIP revision proposes to replace Wyoming's previously approved long-term strategy with conversion of Jim Bridger Units 1 and 2 from coal-firing to natural gas-firing by January 1, 2024, together with NO_X emission and heat input limits, to allow for identical reasonable progress during the first planning period as would occur from the emission reductions from requiring a NO_X emissions limit of 0.07 lb/MMBtu (30-day rolling average) at Jim Bridger Units 1 and 2. The State also included monthly and annual NO_X and SO_2 emissions limits for Jim Bridger Units 1–4. On August 31, 2023, Wyoming submitted a supplement containing associated permit amendments addressing heat input limit and monitoring, recordkeeping, and reporting requirements for Jim Bridger Units 1 and 2.[54] On November 16, 2023, Wyoming submitted a supplement containing an amended permit to correct a typographical error found in the August 31, 2023, supplement.[55]

The Wyoming 2022 SIP revision requires, beginning on January 1, 2024, Jim Bridger Units 1 and 2 to meet a NO_X emission limit of 0.12 lb/MMBtu (30-day rolling average) along with an annual NO_X emission limit of 1,314 tons/year per unit, and a 41.6% reduction in maximum annual heat input limit equaling 21,900,000 MMBtu/year per unit.[56] As a result, the Wyoming 2022 SIP revision replaces the requirement for Jim Bridger Units 1 and 2 to comply with the 0.07 lb/MMBtu emission limits in 2021 and 2022 (Table 1). The Wyoming 2022 SIP revision does not, however, remove or revise the existing NO_X BART determination for Jim Bridger Units 1 and 2 (consistent with current LNB/SOFA NO_X emissions controls) or change the existing reasonable progress emission limits of 0.07 lb/MMBtu for Jim Bridger Units 3 and 4 (consistent with installed SCR emissions controls).

TABLE 1—EXISTING AND PROPOSED NO_X EMISSION LIMITS FOR JIM BRIDGER UNITS 1–4

Unit	Existing NO_X BART emission limit (30-day rolling average; lb/MMBtu) [1]	Existing NO_X reasonable progress emission limit (30-day rolling average; lb/MMBtu) [2]	Proposed NO_X reasonable progress emission limits	
			NO_X (30-day rolling average; lb/MMBtu)	NO_X (tons/year)
1	0.26	0.07	[3] 0.12	[3] [5] 1,314
2	0.26	0.07	[3] 0.12	[3] [5] 1,314
3	0.26	0.07	[4] NA	NA
4	0.26	0.07	[4] NA	NA

[1] Compliance date is March 4, 2019; no changes to the NO_X BART emission limits are proposed.

[2] Compliance dates for each is: Unit 1 = December 31, 2022; Unit 2 = December 31, 2021; Unit 3 = December 31, 2015; and Unit 4 = December 31, 2016.

[3] Compliance date is January 1, 2024.

[4] No change to existing NO_X reasonable progress emission limit of 0.07 lb/MMBtu (30-day rolling average).

[5] Correlates to a 41.67% reduction of the maximum heat input (52,560,000 MMBtu/year) or 21,900,000 MMBtu/year with a 0.12 lb NO_X lb/MMBtu 30-day rolling average limit.

[50] Letter dated May 12, 2020, from Todd Parfitt, Director, Wyoming Department of Environmental Quality, to Gregory Sopkin, Regional Administrator, EPA Region 8, Subject: State Implementation Plant Approval Request—Regional Haze 309(g) SIP revision for PacifiCorp Jim Bridger Power Plant.

[51] 87 FR 2571 (January 18, 2022).

[52] Letter dated December 30, 2022, from Todd Parfitt, Director, Wyoming Department of Environmental Quality, to KC Becker, Regional Administrator, EPA Region 8, Subject: Approval Request—Parallel Process Regional Haze Round One State Implementation Plan (SIP) revision for PacifiCorp Jim Bridger Power Plant.

[53] On May 23, 2022, the state submitted a proposed SIP revision with a request to parallel process the draft SIP (letter dated May 20, 2022, from Todd Parfitt, Director, Wyoming Department of Environmental Quality, to KC Becker, Regional Administrator, EPA Region 8, Subject: Request to Parallel Process the Draft 309(g) Regional Haze Round 1 State Implementation Plan for PacifiCorp Jim Bridger Power Plant).

[54] Letter dated August 31, 2023, from Todd Parfitt, Director, Wyoming Department of Environmental Quality, to KC Becker, Regional Administrator, EPA Region 8, Subject: Supplemental Information for Wyoming's Parallel Process Regional Haze Round One State Implementation Plan (SIP) revision for PacifiCorp Jim Bridger Power Plant.

[55] Letter dated November 16, 2023, from Todd Parfitt, Director, Wyoming Department of Environmental Quality, to KC Becker, Regional Administrator, EPA Region 8, Subject: Supplemental Information for Wyoming's Parallel Process Regional Haze Round One State Implementation Plan (SIP) revision for PacifiCorp Jim Bridger Power Plant.

[56] The reduction in maximum annual heat input is based off the maximum annual heat input limit of 52,560,000 MMBtu/year per unit.

In addition, the Wyoming 2022 SIP revision includes month-by-month NO_X and SO_2 emission limits across all four Jim Bridger units, as well as an enforceable annual plant-wide NO_X plus SO_2 emissions cap of 17,500 tons per year, effective January 1, 2022 (Table 2). The monthly emissions limit and annual emissions cap for Jim Bridger Units 1–4 are federally enforceable through reference to Wyoming air quality permit #P0025809. The final permit was issued on May 5, 2020.[57]

TABLE 2—ENFORCEABLE MONTHLY NO_X AND SO_2 EMISSION LIMITS FOR JIM BRIDGER UNITS 1–4, EFFECTIVE JANUARY 1, 2022

Month	Total units 1–4 NO_X emission limit	Total units 1–4 SO_2 emission limit
	Monthly average basis (lb/hour)	Monthly average basis (lb/hour)
January	2,050	2,100
February	2,050	2,100
March	2,050	2,100
April	2,050	2,100
May	2,200	2,100
June	2,500	2,100
July	2,500	2,100
August	2,500	2,100
September	2,500	2,100
October	2,300	2,100
November	2,030	2,100
December	2,050	2,100
	Annual emissions cap	
Total NO_X plus SO_2	17,500 tons/year	

E. Wyoming's Reassessment of Reasonable Progress Under Long-Term Strategy

To demonstrate that the replacement of 0.07 lb/MMBtu with natural gas conversion, NO_X limits, and reduced heat inputs for Jim Bridger Units 1 and 2 provided equivalent emissions reductions previously approved by the EPA under long-term strategy, the State submitted a reasonable progress analysis for Jim Bridger Units 1 and 2 in the Wyoming 2022 SIP revision.

In its source-specific reasonable progress assessment for Jim Bridger Units 1 and 2, the State considered the four factors as required by 40 CFR 51.308(d)(1)(i)(A).

In 2014, the EPA approved the State's decision to require NO_X controls of 0.07 lb/MMBtu (30-day rolling average) on Jim Bridger Units 1–4 pursuant to its long-term strategy. The State did not conduct a reasonable progress four-factor analysis for any of the Jim Bridger units at that time but instead opted for controls under the long-term strategy provisions found under 40 CFR 51.308(d)(3).[58] The State conducted its four-factor reasonable progress analysis for Jim Bridger Units 1 and 2 for the first time in connection with its 2020 and 2022 SIP submittals to replace the emissions reductions approved for Jim Bridger Units 1 and 2 under the long-term strategy. This is acceptable since 40 CFR 51.308(d)(3) provides that a state's ''long-term strategy must include enforceable emissions limitations, compliance schedules, and other measures as necessary to achieve the reasonable progress goals established by states having mandatory class I Federal areas.''

Pursuant to 40 CFR 51.308(d)(1)(i)(A), in determining the measures necessary to make reasonable progress, a state must take into account the following four factors and demonstrate how they were taken into consideration in making a reasonable progress determination:

- Costs of Compliance;
- Time Necessary for Compliance;
- Energy and Non-Air Quality Environmental Impacts of Compliance; and
- Remaining Useful Life of Any Potentially Affected Sources.

1. Costs of Compliance

For the source-specific reasonable progress analysis, Wyoming provided costs of compliance for three scenarios: (1) installation of SCR on Units 1 and 2 operating on coal, (2) installation of SCR on Units 1 and 2 operating on natural gas, and (3) conversion of Units 1 and 2 from coal to natural gas, together with NO_X and heat input limits. For the installation of SCR operating on coal and conversion from coal to natural gas scenarios, Wyoming used baseline NO_X emission rates for LNB/SOFA of 0.187 lb/MMBtu for Unit 1 and 0.192 lb/MMBtu for Unit 2 (annual average), reflective of the actual emissions rate (2013–2015)[59] and used the 2001–2003 average annual heat input of 42,977,652 MMBtu/year and 40,898,999 MMBtu/year to calculate baseline NO_X emissions in tons/year of 4,018 and 3,926 for Units 1 and 2, respectively.[60] For the installation of SCR operating on natural gas scenario, Wyoming used the stipulations in the consent decree[61] as the baseline: NO_X emission rate of 0.12 lb/MMBtu (30-day rolling average) for both Units 1 and 2

[57] Letter dated May 5, 2020, from Nancy E. Vehr, Administrator, Air Quality Division, Wyoming Department of Environmental Quality, to James Owens, Director, Environmental Services, PacifiCorp, Subject: Permit #P0025809 (Permit #0025809).

[58] See 77 FR 33040 (listing stationary sources evaluated under the four reasonable progress factors and not including Jim Bridger).

[59] Wyoming 2022 SIP revision, Appendix C at 2–3. *Note:* The Wyoming 2020 SIP revision identifies identical baseline NO_X emission rates that reflect the actual emissions rate from 2013–2015.

[60] Wyoming 2022 SIP revision, cost supplement.

[61] Consent Decree, *State of Wyoming* v. *PacifiCorp*, Docket No. 2022–CV–200–333, First Judicial District Court, Laramie, Wyoming. (February 14, 2022).

and annual heat input of 21,900,000 MMBtu/year. The NO_X emission rate for SCR operating on either coal or natural gas was assumed to be 0.05 lb/MMBtu (annual), while the NO_X emission rate for conversion from coal to natural gas was assumed to be 0.12 lb/MMBtu (30-day rolling average).[62] Wyoming based total capital costs to install SCR ($140,428,000 for each Unit 1 and 2) on the actual costs incurred to install SCR technology on Jim Bridger Units 3 and 4.[63] The total capital costs to convert Units 1 and 2 from coal-fired to natural gas-fired was found to be $14,632,077 and $14,151,451, respectively. The State annualized capital costs using the capital recovery factor approach described in the EPA's Control Cost Manual using amortization periods between one and 14 years reflective of each of the three different scenarios.[64] [65] Total annual costs were calculated as the sum of the annualized capital costs and total operation and maintenance costs. Finally, the cost-effectiveness of each scenario was calculated on a dollar-per-ton of pollutant removed basis by dividing the total annual costs by the reduction in annual NO_X emissions associated with each scenario.

Costs of compliance for Wyoming's reasonable progress analysis for Jim Bridger Units 1 and 2 is summarized in Table 3.[66]

TABLE 3—SUMMARY OF JIM BRIDGER UNITS 1 AND 2 NO_X REVISED REASONABLE PROGRESS COST ANALYSIS

Scenario	Assumed NO_X emissions rate (lb/MMBtu)	Emissions reduction (tons per year)	Total annual cost ($/year)	Average cost effectiveness ($/ton)
Unit 1				
SCR operating on coal	[1] 0.05	2,944	$152,369,457	$51,756
SCR operating on natural gas	[1] 0.05	766	18,036,235	23,531
Conversion from coal to natural gas [3]	[2] 0.12	2,704	4,018,476	1,486
Unit 2				
SCR operating on coal	[1] 0.05	2,904	94,115,947	32,411
SCR operating on natural gas	[1] 0.05	766	18,036,235	23,531
Conversion from coal to natural gas [3]	[2] 0.12	2,612	3,962,516	1,517

[1] Based on an annual average.
[2] Based on a 30-day rolling average.
[3] Operating with a heat input limit of 21,900,000 MMBtu/year (equal to 41.6% of maximum annual heat input).

Ultimately, Wyoming determined that conversion to natural gas without the installation of SCR is more cost-effective than conversion to natural gas with the addition of SCR particularly with the additional NO_X and heat input reductions reflected in the consent decree.[67]

2. Time Necessary for Compliance

The SIP approved by the EPA on January 30, 2014, requires an emission limit of 0.07 lb/MMBtu associated with the installation of LNB/SOFA + SCR on Jim Bridger Unit 1 by December 31, 2022, and on Unit 2 by December 31, 2021. The current LNB/SOFA NO_X emissions controls were installed in 2010 and 2005 for Units 1 and 2, respectively.[68]

Wyoming stated that because there is an enforceable commitment to cease coal operation and meet natural gas conversion limits at Jim Bridger Units 1 and 2 by January 1, 2024,[69] SCR installation would take longer than the planned natural gas conversion. Furthermore, according to the State, installing SCR on a converted natural gas unit makes no practical or economic sense.

3. Energy and Non-Air Quality Environmental Impacts of Compliance

Wyoming determined that the conversion to natural gas will result in fewer overall energy and environmental impacts when compared to the installation of SCR, including fewer impacts from: mercury (Hg), greenhouse gases (GHG), carbon monoxide (CO), carbon dioxide (CO_2), PM, sulfuric acid (H_2SO_4), coal and natural gas consumption, coal combustion residual (CCR) production and disposal, and raw water consumption associated with the burning of coal. Additionally, Wyoming also determined that SCR control technology would require the storage and use of ammonia and would create more CCR. Wyoming also notes that fewer GHGs will be produced with the gas conversion compared to SCR, and that the gas conversion would reduce the Jim Bridger plants auxiliary load demand by approximately 10.4 megawatts of energy compared to SCR. Finally, the State noted that the requirements relating to the natural gas conversion effectively limit the average annual capacity factor (heat input) for Units 1 and 2 to approximately 42%, resulting in significant reductions in the consumption of natural resources.

4. Remaining Useful Life

For the Wyoming 2022 SIP revision, Wyoming evaluated each emission control technology scenario for Jim Bridger Units 1 and 2 using the year 2024 as the end of remaining useful life on coal and the year 2037 as the end of remaining useful life on natural gas.[70]

[62] Throughout, we refer to the averaging periods—*annual average* for 0.05 lb/MMBtu and *30-day rolling average* for 0.12 lb/MMBtu—which Wyoming provided in the Wyoming 2022 SIP revision. However, we recognize the need to adjust the averaging periods, as appropriate. Indeed, this concept is discussed in similar rulemakings for Wyoming (79 FR 5167 (January 30, 2014), 84 FR 10434 (March 21, 2019)), and we discuss the impact of such adjustments in section IV. of this document.

[63] Wyoming 2022 SIP revision, Appendix C at 5. *Note:* The Wyoming 2022 SIP revision cites the February 4, 2019, S&L Report as the basis for the total capital costs.

[64] EPA, ''Cost Control Manual,'' Section 4, Chapter 2, June 2019, page 80, available at *https://www.epa.gov/economic-and-cost-analysis-air-pollution-regulations/cost-reports-and-guidance-air-pollution.* (last visited February 2024).

[65] The amortization period in years for SCR operating on coal was 1.00 (December 2022–December 2023) and 1.67 (May 2022–December 2023) for Units 1 and 2, respectively. The amortization period for SCR operating on natural gas and conversion from coal to natural gas was 14 (2024–2037) for both Units 1 and 2.

[66] Wyoming 2022 SIP revision at 3, 4, and cost supplement.

[67] Wyoming 2022 SIP revision at 4.

[68] Id. at 6.

[69] *Consent Decree, Wyoming* v. *PacifiCorp*, Docket No. 2022–CV–200–333. First Judicial District Court, Laramie, Wyoming. (February 14, 2022).

[70] Wyoming 2022 SIP revision at 4.

5. Reasonable Progress Demonstration

Upon completion of a reasonable progress four-factor analysis, states must demonstrate how the four factors were taken into consideration in making a reasonable progress determination for each class I area within the state.[71] Taking into consideration the four statutory reasonable progress factors described previously, Wyoming determined that the conversion of Units 1 and 2 from coal-firing to natural gas-firing, together with NO_X emission and heat input limits, provided greater reasonable progress at a lower cost and with fewer negative environmental impacts when compared to SCR as reflected in the 2014 final rule. Accordingly, Wyoming's 2022 SIP revision replaces the emission limits of 0.07 lb/MMBtu (30-day rolling average) associated with SCR installation at Jim Bridger Units 1 and 2 with natural gas conversion together with NO_X emission and heat input limits at those same units as part of the State's long-term strategy to achieve reasonable progress for the first planning period.[72]

F. Summary of Wyoming's Additional Proposed Revisions to the Emission Limits for Jim Bridger

In addition to Wyoming's revised emission reductions derived from the conversion to natural gas and associated NO_X limits, and reduced heat input for Jim Bridger's Units 1 and 2 under the reasonable progress analysis, the State is requiring monthly and annual NO_X and SO_2 emission limits for Jim Bridger Units 1–4 (summarized in Table 2) and an annual plant-wide NO_X and SO_2 emissions cap of 17,500 tons per year, federally enforceable through reference to permit #P0025809, which is effective through December 31, 2023.

IV. The EPA's Evaluation and Proposed Approval of Wyoming's Regional Haze SIP Revisions

For the reasons described in this section, the EPA proposes to approve Wyoming's 2022 SIP revision. The proposed Wyoming 2022 SIP revision adds a source-specific NO_X reasonable progress analysis and determination for Jim Bridger Units 1 and 2 and finds conversion from coal-firing to natural gas-firing, together with NO_X emission and heat input limits, to be sufficient for reasonable progress and long-term strategy during the first planning period and that the emission limits associated with the installation of SCR are no longer required. Separately, we are also proposing to approve Wyoming's monthly and annual NO_X and SO_2 emission limits for Jim Bridger Units 1–4. Our proposed action is based on an evaluation of Wyoming's regional haze SIP submittal under the regional haze requirements at 40 CFR 51.300–51.309 and CAA section 169A and 169B. The Wyoming 2022 SIP revision was also evaluated for compliance with the general SIP requirements contained in CAA section 110 and other provisions of the CAA and our regulations applicable to this action. The EPA proposes to approve the Wyoming 2022 SIP revision as meeting the relevant statutory and regulatory requirements. Where appropriate, we provide additional rationale to supplement the State's analysis and to support our conclusions. The EPA is not reopening, and thus not accepting comment on, the EPA's 2014 approval of Wyoming's BART determinations for Jim Bridger Units 1–4, the EPA's 2014 approval of the emission limits Wyoming required as long-term strategy controls for Jim Bridger Units 3 and 4, or the EPA's 2022 proposed disapproval of Wyoming's 2020 SIP revision. Any comments on these issues are beyond the scope of this action and will not be addressed in this rulemaking.

A. The EPA's Proposed Approval of Wyoming's Reasonable Progress Determination for Jim Bridger Units 1 and 2

We are proposing to approve Wyoming's December 2022 regional haze SIP revision pertaining to the State's reasonable progress NO_X determinations for Jim Bridger Units 1 and 2.

In our analysis of Wyoming's 2022 SIP revision, we evaluated Wyoming's reasonable progress determination for Jim Bridger Units 1 and 2 under 40 CFR 51.308(d)(1)(i)(A). As a threshold matter and given the considerably shortened remaining useful life of the existing coal-fired boilers due to the proposed natural gas conversion, we propose to find that it is appropriate for Wyoming to reassess its existing long-term strategy to achieve reasonable progress for Jim Bridger Units 1 and 2 by conducting a four-factor analysis.

1. Basis for the EPA's Proposed Approval

Our proposed approval is based on the following: (1) the fact that this is a first planning period reasonable progress determination for BART sources; (2) the costs of compliance; and (3) an analysis of projected emissions reductions achievable.

As explained in the EPA's 2007 Reasonable Progress Guidance for the first planning period, states have latitude to determine appropriate additional control requirements for ensuring reasonable progress.[73] Unlike BART, which contains very specific applicability criteria to procure, install, and operate the best available retrofit technology and a regulatory framework for how states perform a ''one-time'' evaluation of emissions controls for the first planning period, the procedure for determining what controls are necessary to make reasonable progress is not as specific and a reasonable progress analysis is performed each planning period.[74] Thus, although states must consider the four statutory factors, at a minimum, in determining reasonable progress, states also have more flexibility in how to take these factors into consideration.[75] The text of the CAA and case law likewise support affording states deference in their reasonable progress determinations, provided those determinations are reasonable given the applicable statutory and regulatory requirements and purpose of the regional haze program.[76]

Furthermore, the EPA's 2007 Guidance provides that reasonable progress analyses for the first implementation period are conducted against the backdrop of a state's BART determinations. In particular, the EPA's 2007 Guidance states that, given the overlap between the statutory BART and reasonable progress factors, it may be reasonable to conclude that any controls required pursuant to a BART determination for a source also satisfy the reasonable progress-related requirements for that source.[77] Here, the two sources (Units 1 and 2) being analyzed are BART sources for which BART determinations were made and emission limits were required. In its 2022 SIP revision, Wyoming considered what, if any, controls should be required in addition to the BART controls

[71] 40 CFR 51.308(d)(1)(i)(A).

[72] Wyoming 2022 SIP revision at 8.

[73] The EPA's 2007 Guidance at page 4–2.

[74] Compare 40 CFR 51.308(e) and part 51, appendix Y with 40 CFR 51.308(d).

[75] The EPA's 2007 Guidance at page 5–1.

[76] 42 U.S.C. 7407(a) (''Each State shall have the primary responsibility for assuring air quality within [its] entire geographic area.''); id. section 7401(a)(3) (''[A]ir pollution prevention . . . is the primary responsibility of States and local governments.''); *Oklahoma* v. *EPA,* 723 F.3d 1201, 1204 (10th Cir. 2014) (''The Clean Air Act uses a cooperative federalism approach to regulate air quality.'') (Internal quotation marks omitted), *Luminant Generation Co.* v. *EPA,* 675 F.3d 917, 921 (5th Cir. 2012) (Congress gave states ''the primary responsibility for implementing [air quality] standards.'') (Internal quotation marks omitted); *Union Elec. Co.* v. *EPA,* 427 U.S. 246, 250 (1976) (states have ''wide discretion'' in formulating SIPs).

[77] See the EPA's 2007 Guidance at pages 4–2—4–3.

determined appropriate (LNB/SOFA) for the first planning period. Specifically, the State performed a reasonable progress four-factor analysis for Jim Bridger Units 1 and 2 to analyze whether it was appropriate to remove the existing 0.07 lb/MMBtu emission limits associated with SCR in addition to the five-factor BART analysis it performed previously. We propose to find that the outcome of that analysis—that the conversion of Jim Bridger Units 1 and 2 from coal-firing to natural gas-firing, together with NO_X emission and heat input limits, makes reasonable progress for the first implementation period—is not unreasonable and is supported by the EPA's 2007 Guidance and Regional Haze Rule.[78]

a. Costs of Compliance

In its reasonable progress analysis for Jim Bridger Units 1 and 2, the statutory factor that appears to have been the most significant in Wyoming's reasonable progress determination is the costs of compliance. As an initial matter, we agree with Wyoming's reliance on the revised cost estimates reflected in Wyoming's 2022 SIP revision rather than the cost estimates from EPA's 2014 final rule. Specifically, based on our review, the following elements of Wyoming's revised cost calculation are appropriate: (1) the use of actual annual average (2013–2015) baseline NO_X emissions rates for LNB/SOFA for the installation of SCR operating on coal and conversion from coal-firing to natural gas-firing scenarios; (2) the use of baseline NO_X emissions rates reflected in the consent decree associated with the installation of SCR operating on natural gas scenario; (3) the use of NO_X emissions rates of 0.05 lb/MMBtu (annual average) and 0.12 lb/MMBtu (30-day rolling average) for the installation of SCR firing on coal or natural gas and the conversion from coal-firing to natural gas-firing, respectively; (4) the use of amortization periods of 1.00 (12 months) and 1.67 (20 months) for the installation of SCR firing coal on Units 1 and 2, respectively; and (5) the use of actual costs for the installation and operation of SCR derived from those costs incurred for Units 3 and 4. However, we disagree with Wyoming's amortization period for SCR firing on natural gas and for conversion from coal-firing to natural gas-firing scenarios and are therefore providing supplemental analysis to support our conclusions. Additionally, we are supplementing our cost calculations with a common baseline reflecting the maximum allowable heat input.

With respect to control cost estimates, including amortization periods, our NO_X control cost estimates in the reasonable progress analysis are based on the current version of the EPA's Control Cost Manual, which was revised in 2014 and, as updated, includes a 30-year equipment life for SCR.[79] The change in the equipment life estimate from 20 to 30 years for SCR affects annual cost estimates and average cost-effectiveness. The updated Control Cost Manual also requires the use of the source's ''firm-specific nominal rate'' of borrowing instead of the manual's prior instruction to use a 7% interest rate.[80] In response to comments on Wyoming's 2020 SIP revision, PacifiCorp stated that its actual rate of borrowing is higher than 7%.[81] Here, we note that PacifiCorp's actual rate of borrowing is 7.303% as provided in Wyoming's 2022 SIP revision.[82] We agree that this approach is appropriate and consistent with the updated Control Cost Manual. However, we are proposing to find that the State did not use the appropriate amortization period for the installation of SCR on natural gas-firing and conversion from coal-firing to natural gas-firing scenarios. In both of these scenarios, Wyoming used an amortization period of 14 years (2024–2037) based on the *expected* remaining useful life of Jim Bridger Units 1 and 2 found in PacifiCorp's 2021 Integrated Resource Plan (IRP).[83] Because there is not an *enforceable* closure date in the Wyoming regional haze SIP that would effectively shorten the remaining useful life of Jim Bridger Units 1 and 2, we find that the Cost Control Manual requires that the default remaining useful life (30 years) be used as the amortization period of the control technologies being evaluated in the cost analyses.[84]

With respect to the baseline NO_X emissions rates, Wyoming's cost analyses assessed the installation of SCR operating on coal and conversion to natural gas scenarios against a 2001–2003 baseline heat input of 42,977,652 MMBtu/year and 40,898,999 MMBtu/year for Units 1 and 2, respectively, and 2013–2015 baseline NO_X emission rates for LNB/SOFA. Because reasonable progress analyses for BART sources in the first implementation period are conducted to determine what, if anything, in addition to BART is necessary to make reasonable progress and are a separate control determination than BART,[85] and because BART controls (LNB/SOFA) are already installed and operating on these units, we believe it was reasonable for Wyoming to consider the cost of potential reasonable progress controls (SCR operating on coal and conversion to natural gas) relative to a baseline of BART (2013–2015 baseline NO_X emission rates for LNB/SOFA) and the 2001–2003 baseline heat input figures. Moreover, because the installation of controls (SCR) operating on natural gas scenario reflects a baseline associated with natural gas firing instead of coal-firing, we also believe it was reasonable for Wyoming to use the baseline heat input (21,900,000 MMBtu/year) and NO_X emission limits (0.12 lb/MMBtu; 1,314 tons/year) required in the consent decree for both Units 1 and 2. Thus, as previously stated, we agree with the State and find the baselines appropriate for each of the three scenarios.

While the Regional Haze Rule does not require states to consider fuel switching (*e.g.* from coal to natural gas) as control options, states are free to do so.[86] In Wyoming and other states, we have approved state-adopted requirements for switching fuels, which have usually been negotiated between the source operator and the state.[87] Thus, because, as previously described, this is not a BART determination, and because two of the control scenarios (conversion from coal to natural gas and installation of SCR operating on natural gas) involve fuel switching from coal to natural gas, we believe it is also reasonable to consider the cost using a common baseline reflecting potential-to-emit (*e.g.,* allowable) baseline NO_X emissions rather than the historical baseline emissions reflective of coal-

[78] 40 CFR 51.308(d)(1).

[79] EPA, ''Cost Control Manual,'' Section 4, Chapter 2, June 2019, page 80, available at *https://www.epa.gov/economic-and-cost-analysis-air-pollution-regulations/cost-reports-and-guidance-air-pollution* (last visited February 2024).

[80] Id. at Section 1, Chapter 2, November 2017, pages 14–17, available at *https://www.epa.gov/economic-and-cost-analysis-air-pollution-regulations/cost-reports-and-guidance-air-pollution* (last visited February 2024).

[81] Letter dated October 25, 2019, from James Owen, Director, Environmental, PacifiCorp, to Nancy Vehr, Administrator, Wyoming Department of Environmental Quality, Air Quality Division, at page 7. (Originally submitted as part of Wyoming 2020 SIP revision).

[82] Wyoming 2022 SIP revision, cost supplement.

[83] Wyoming 2022 SIP revision at 3.

[84] EPA, ''Cost Control Manual,'' Section 4, Chapter 2, June 2019, page 80, available at *https://www.epa.gov/economic-and-cost-analysis-air-pollution-regulations/cost-reports-and-guidance-air-pollution* (last visited February 2024). However, we also note that PacifiCorp's 2021 Integrated Resource Plan Update lists retirement for Jim Bridger Units 1 and 2 as 2037. PacifiCorp, ''PacifiCorp Integrated Resource Plan Update,'' March 2022, page 13.

[85] The EPA's 2007 Guidance at page 4–2.

[86] 40 CFR part 51, appendix Y.

[87] 83 FR 31332 (July 5, 2018), 84 FR 10433 (March 21, 2019).

firing. We therefore conducted an additional cost analysis using the maximum allowable heat input limit of 52,560,000 MMBtu/year from Wyoming's 2009 BART Application Analysis as the baseline for potential further controls along with the 30-year amortization period for the SCR on natural gas and conversion from coal-firing to natural gas-firing scenarios (Table 4).[88] [89]

TABLE 4—THE EPA'S SUMMARY OF JIM BRIDGER UNITS 1 AND 2 NO_X REVISED REASONABLE PROGRESS COST ANALYSIS

Scenario	NO_X emissions rate (lb/MMBtu)	Emissions reduction (tons per year)	Total annual cost ($/year)	Average cost effectiveness ($/ton)
Unit 1				
SCR operating on coal	[1] 0.05	3,600	$152,369,457	$42,321
SCR operating on natural gas	[1] 0.05	767	13,355,567	17,424
Conversion from coal to natural gas [3]	[2] 0.12	3,600	3,530,769	981
Unit 2				
SCR operating on coal	[1] 0.05	3,732	94,115,947	25,220
SCR operating on natural gas	[1] 0.05	767	13,355,567	17,424
Conversion from coal to natural gas [3]	[2] 0.12	3,732	3,490,829	935

[1] Based on an annual average.
[2] Based on a 30-day rolling average.
[3] Operating with a heat input limit of 21,900,000 MMBtu/year (equal to 41.6% of maximum annual heat input).

Thus, when comparing Wyoming's cost estimates (Table 3) with our revised cost estimates (Table 4) using a common baseline maximum heat input and 30-year amortization periods for SCR on natural gas and conversion from coal-fired to natural gas-fired scenarios, the average cost-effectiveness for SCR on coal for Units 1 and 2, respectively, are $51,756 and $32,411 per ton of NO_X reduced using Wyoming's cost estimates and $42,321 and $25,220 per ton of NO_X reduced using the EPA's revised cost estimates. The average cost-effectiveness for SCR on natural gas for Units 1 and 2, respectively, are $23,531 and $23,531 per ton of NO_X reduced using Wyoming's cost estimates and $17,424 and $17,424 per ton of NO_X reduced using the EPA's revised cost estimates. The average cost-effectiveness for converting from coal-fired to natural gas-fired for Units 1 and 2, respectively, are $1,486 and $1,517 per ton of NO_X reduced using Wyoming's cost estimates and $981 and $935 per ton of NO_X reduced using the EPA's revised cost estimates. As explained previously, while the EPA believes it is appropriate for Wyoming to consider the cost of potential reasonable progress controls (SCR operating on coal and conversion to natural gas) relative to a baseline of BART (2013–2015 baseline NO_X emission rates for LNB/SOFA) using 2001–2003 baseline heat input, comparing the potential reasonable progress controls, including the conversion to a different fuel source, to a common baseline reflecting the maximum allowable heat input of the source (as well as appropriate amortization periods) is appropriate. To that end, the average cost-effectiveness for all three scenarios is reduced using the EPA's revised cost estimates compared to Wyoming's cost estimates.

Nevertheless, despite the reductions in average cost-effectiveness reflected in the EPA's revised cost estimates, we agree with Wyoming's consideration of cost-effectiveness and rejection of SCR operating on coal and operating on natural gas as reasonable progress controls because the cost-effectiveness figures for these controls are well above controls similarly determined in other first planning period actions to be too costly. For example, at the Antelope Valley Station power plant in North Dakota (Units 1 and 2), we determined that reasonable progress for NO_X required an emission-limit corresponding to LNB (0.17 lb/MMBtu).[90] The average cost-effectiveness values for LNB at each unit were $586 and $661 per ton and that level of control was predicted to achieve NO_X reductions of approximately 3,500 tons per unit. The average cost-effectiveness for LNB + SCR at each unit were $6,746/ton and $7,606/ton and that level of control was predicted to achieve NO_X reductions of approximately 6,500 tons per unit. We ultimately excluded LNB + SCR because the cost-effectiveness values were much higher than LNB. We therefore concluded that requiring higher performing controls during the first planning period was not reasonable.[91] Similarly, we are proposing here to approve Wyoming's determination that a higher performing control, in this case SCR [92] operating on coal or natural gas, is not reasonable given the cost-effectiveness and consideration of the other statutory factors discussed in this document. Here, the cost of SCR controls installed at Jim Bridger Units 1 and 2 whether on coal-fired or natural gas-fired boilers is significantly greater than the cost of conversion from coal to natural gas.

In addition to the Antelope Valley Station, we are also proposing to find that Wyoming's determinations were reasonable and supported by the EPA's reasonable progress determination for Tucson Electric Power's Springerville Generating Station in Arizona (Springerville). For Springerville, cost effectiveness was analyzed after the installation of LNB with over-fire air (LNB/OFA) similar to the analysis of Jim Bridger Units 1 and 2 with LNB/SOFA controls already installed (see Tables 3 and 4). The Springerville Generating

[88] See 'Firing Rate' in Wyoming BART Application Analysis (AP–6040), page 3. (May 28, 2009).

[89] EPA Supplemental NO_X Revised Reasonable Progress Analysis. March 13, 2024.

[90] 76 FR 58570, 58632 (September 21, 2011); 77 FR 20894, 20896–97, 20899 (April 6, 2012). LNB here refers to LNB with close-coupled overfire air and SOFA.

[91] 76 FR at 58631–32; 77 FR at 20899.

[92] Antelope Valley was not a BART source and did not have LNB installed at the time of the reasonable progress analysis; therefore, LNB was assessed as a potential reasonable progress control in addition to LNB + SNCR and LNB + SCR. In contrast, Jim Bridger Units 1 and 2 are operating LNB/SOFA pursuant to those units' BART determinations.

Station contains four units, and like Jim Bridger, Springerville Units 3 and 4 already had SCR controls installed at the time of the reasonable progress analysis for Units 1 and 2. We determined the average cost-effectiveness for SCR at Springerville Units 1 and 2 to be $6,829 per ton and $6,085 per ton, respectively.[93] Ultimately, we concluded that the visibility benefit of SCR, while larger at 0.41 deciviews at the most impacted Class I area, did not warrant the relatively high cost of controls for purposes of reasonable progress in the first planning period.[94]

Wyoming did not assess visibility impacts; thus, we are not assessing visibility impacts in our review. Nevertheless, the average cost effectiveness associated with the installation of SCR on either the coal-fired or natural-gas fired boilers would be much higher than those we found unreasonable on Springerville Units 1 and 2.

b. Other Statutory Factors

Of the four reasonable progress factors, cost was the most significant factor in our analysis of controls for Units 1 and 2. However, we also considered the other three statutory factors: time necessary for compliance, energy and non-air quality environmental impacts, and remaining useful life.

With respect to time necessary for compliance, the December 31, 2022, and December 31, 2021, compliance deadlines to install SCR on Jim Bridger Units 1 and 2 have existed since 2014. Therefore, we do not agree with the State that the time necessary for compliance is ''no longer accurate or relevant.''

Relevant to energy and non-air quality environmental impacts, the EPA's 2007 Guidance references the EPA's BART Guidelines, which provide, among other things, that (1) the fact that a control technology uses energy in and of itself does not disqualify that technology, and (2) the fact that a control technology creates waste that must be disposed of does not necessarily suggest selection of that technology is unwarranted, especially if the control has been applied to similar facilities elsewhere and the waste is similar to those other applications.[95] The 2007 Guidance also provides that to the extent energy and non-air quality environmental impacts of compliance are quantifiable, they should be included in the engineering analysis supporting the cost of compliance estimates.[96] Wyoming analyzed and included relevant information in this regard in its revised cost analysis for the Wyoming 2022 SIP revision.[97] We also agree with the State that the requirements relating to natural gas conversion effectively limits the average annual capacity factor (heat input) to approximately 42%, which is significant and may result in reducing the consumption of natural resources.

With respect to remaining useful life, we agree with the State that the remaining useful life of the existing coal-fired boilers under the SCR on coal-firing scenario is shortened to the end of 2023 by the enforceable provisions in the consent decree. However, as stated previously, the State did not provide an enforceable closure mechanism that would ensure that the remaining useful life of Jim Bridger Units 1 and 2 under the natural gas conversion and SCR on natural gas-firing scenarios would not extend beyond 2037.

Overall, despite disagreeing with certain aspects of Wyoming's reasonable progress analyses, consideration of the three other statutory factors—remaining useful life, time necessary for compliance, and energy and non-air quality environmental impacts—does not alter analysis that the costs of compliance is the determining factor for the selection of controls at Jim Bridger Units 1 and 2.

c. Analysis of Projected Emissions Reductions Achievable

We also analyzed the three scenarios based on their associated NO_X emissions and emissions reductions achievable (Tables 5 and 6).

TABLE 5—JIM BRIDGER UNITS 1 AND 2 EMISSIONS LIMITS WHEN CONVERTED TO NATURAL GAS

Permitted conversion	NO_X
Coal-fired to natural gas-fired boilers [1]	0.12 lb/MMBtu (30-day rolling average) 1,314 tons/year.

[1] Operating with a heat input limit of 21,900,000 MMBtu/year (equal to 41.6% of maximum annual heat input).

TABLE 6—JIM BRIDGER UNITS 1 AND 2 COAL TO NATURAL GAS EMISSIONS COMPARISON

Fuel	Permitted controls	NO_X		
		Emission limit (lb/MMBtu, 30-day rolling average)	Annual emissions (tons/year)	Annual reduction (tons/year)
Coal	Existing controls + SCR	[1] 0.07	1,314	3,600
Natural gas	Heat input limit, NO_X limits	0.12	1,314	3,600

[1] Equivalent to 0.05 lb/MMBtu annual average.

As previously discussed, the EPA approved Wyoming's NO_X emission limit of 0.07 lb/MMBtu (30-day rolling average) for Jim Bridger Units 1 and 2 that reflected existing LNB/SOFA with the installation of SCR on both units under the State's long-term strategy. The installation of SCR on Jim Bridger Units 1 and 2 would reduce NO_X emissions by 3,600 tons/year resulting in total NO_X emissions of 1,314 tons/year when operated at maximum heat input. Likewise, the conversion from coal to natural gas, together with NO_X emission and heat input limits, would result in an equivalent NO_X emissions reduction of 3,600 tons/year resulting in equivalent total NO_X emissions of 1,314 tons/year. Thus, once Units 1 and 2 are converted from coal to natural gas under the conditions of the consent decree, the

[93] 79 FR 9318, 9359 (February 18, 2014).

[94] 79 FR 9360; see also 79 FR 52420, 52420 (September 3, 2014).

[95] The EPA's 2007 Guidance at pages 5–2 and 5–3; 40 CFR part 51, appendix Y, IV.D.4.h–i.

[96] The EPA's 2007 Guidance at pages 5–2 and 5–3.

[97] Wyoming 2022 SIP revision, cost supplement.

NO_X annual emissions are equivalent to the annual emissions achieved with coal-fired SCR controls.

Notably, and as mentioned previously,[98] we recognize the need to adjust the averaging periods (*e.g.,* annual actual average, 30-day rolling average), as appropriate. In the Wyoming 2022 SIP revision, the State chose to use an annual NO_X emissions rate of 0.05 lb/MMBtu to represent the installation of SCR on coal-fired or natural gas-fired boilers, which we are proposing to find appropriate. Generally, the NO_X *annual* average emission rate is based on the expected annual emission performance under a *30-day rolling* average emission rate. The latter value will necessarily be higher than the former because of the shorter averaging period and a margin for compliance.

For example, the relationship between *annual* average and *30-day rolling* average can be observed at Jim Bridger Units 3 and 4 which are subject to a 30-day rolling average emission limit of 0.07 lb/MMBtu and are achieving actual annual emission rates of approximately 0.05 lb/MMBtu.[99] Thus, we find that an estimated actual annual emission limit of 0.05 lb/MMBtu appropriately corresponds to the 30-day rolling average emission limit of 0.07 lb/MMBtu.

2. Summary of the EPA's Evaluation of Wyoming's Reasonable Progress Demonstration

We are proposing to find that Wyoming's determination was not unreasonable based on the circumstances described herein. However, we note that it may be necessary to reassess higher performing controls for reasonable progress sources, including Jim Bridger Units 1 and 2, in future planning periods.[100]

Regardless, considering the fact that this is a first planning period reasonable progress determination for BART sources which the State has already required controls for the first planning period, the costs of compliance, and the analysis of projected emissions reductions achievable, it is not unreasonable for Wyoming to conclude that conversion from coal-firing to natural gas-firing, together with NO_X emission and heat input limits, on Jim Bridger Units 1 and 2 is sufficient to make reasonable progress in the first planning period. Thus, we are proposing to fully approve Wyoming's reasonable progress determination for Jim Bridger Units 1 and 2 for the first implementation period.

B. The EPA's Proposed Approval of Wyoming's Long-Term Strategy for Jim Bridger Units 1 and 2

Under 40 CFR 308(d)(3), a state's ''long-term strategy must include enforceable emissions limitations, compliance schedules, and other measures as necessary to achieve the reasonable progress goals established by States having mandatory Class I Federal areas.'' Wyoming submitted the Wyoming 2022 SIP revision to replace the approved reductions under the long-term strategy with comparable emission reductions as analyzed under reasonable progress. As described in more detail previously, we are proposing to find that the conversion of Jim Bridger Units 1 and 2 to natural gas along with associated NO_X limits and decreasing heat input, results in NO_X annual emissions that are equivalent to the annual emissions achieved with coal-fired SCR controls (a reduction of NO_X emissions by 3,600 tons/year resulting in total NO_X emissions of 1,314 tons/year when operated at maximum heat input). Since reasonable progress is a subset of the requirements for the long-term strategy, adoption of the emission reductions under reasonable progress for Jim Bridger Units 1 and 2 will also ensure that the long-term strategy requirements are met. Because Wyoming has demonstrated that the proposed emissions reductions for Jim Bridger Units 1 and 2 under reasonable progress are equivalent to the long-term strategy emissions reductions Wyoming is proposing to replace for those same units, we are also proposing to approve Wyoming's reasonable progress NO_X emissions limit derived for natural gas conversion and reduced heat inputs for Jim Bridger Units 1 and 2 as meeting the requirements of long-term strategy.

C. Monthly and Annual NO_X and SO_2 Emission Limits for Jim Bridger Units 1–4

Our proposed approval of Wyoming's reasonable progress determination for Jim Bridger Units 1 and 2 is based solely on the source-specific NO_X reasonable progress analysis, as this analysis and determination pertains to NO_X only. As previously stated, Wyoming did not provide a rationale or analysis for the inclusion of the monthly and annual NO_X and SO_2 emission limits. Furthermore, these limits include both NO_X and SO_2 emissions reductions which is outside of the scope of this proposed rulemaking. Nevertheless, we acknowledge that (1) per the EPA's 2007 Reasonable Progress Goals Guidance, Wyoming has discretion to evaluate factors (beyond the four statutory factors) that it considers relevant in formulating its long-term strategy,[101] and (2) the inclusion of the monthly and annual NO_X and SO_2 emissions limits will reduce haze-causing pollutants. Indeed, the State has opted to adopt and make enforceable these monthly and annual NO_X and SO_2 emission limits, as proposed by PacifiCorp, through a state permit. Thus, we propose to find that these limits are relevant to Wyoming's progress towards natural visibility conditions at its Class I areas. However, because we are proposing that Wyoming's regional haze obligations under 40 CFR 51.308(d)(1)(i)(A) are met by the determinations made pursuant to the NO_X reasonable progress analysis, we propose to accept these limits solely as a SIP-strengthening measure, thus making them federally enforceable through incorporation and reference to Wyoming air quality permit #P0025809.[102]

D. Monitoring, Recordkeeping, and Reporting

We are proposing to approve certain monitoring, recordkeeping, and reporting requirements found in Wyoming air quality permit #P0036941 associated with the conversion from coal-firing to natural gas-firing which, if finalized, will replace the monitoring, recordkeeping, and reporting requirements associated with EPA's 2014 final rule found in 40 CFR 52.2636(e) through 40 CFR 52.2636(k).[103] We are also proposing to approve an additional monitoring, recordkeeping, and reporting condition into the SIP associated with permit #P0025809 related to the monthly and annual NO_X and SO_2 emission limits for Jim Bridger Units 1–4.[104] The condition will be in addition to, and does not replace, existing requirements.[105]

[98] See footnote #63.

[99] 83 FR 55656, 55662 (November 7, 2018).

[100] Wyoming's regional haze second planning period proposed SIP revision was due July 31, 2021. 40 CFR 51.308(f).

[101] The EPA's 2007 Guidance at page 5–1.

[102] We are not evaluating the monthly and annual NO_X and SO_2 emission limits beyond our proposed acceptance of these limits as a SIP-strengthening measure.

[103] Permit #P0036941, Conditions 4, 5, 6, 10.i.1, 10.i.4, 17, 18, 19, 20, and 21.

[104] Permit #P0025809, Condition 8.i.

[105] The monitoring, recordkeeping, and reporting requirements associated with Permit #P0025809 correspond to the monitoring, recordkeeping, and reporting requirements promulgated at 40 CFR 52.2636(e) through 40 CFR 52.2636(k) and differ only as necessary to accommodate the differences in emissions rates used for the monthly annual NO_X and SO_2 emissions limits. Specifically, the monitoring, recordkeeping, and reporting requirements at 40 CFR 52.2636(e) through 40 CFR 52.2636(k) assume lb/MMBtu rates for NO_X on a 30-

Continued

The BART emission limits for Units 3 and 4 identified for the Jim Bridger power plant in Table 1 of 40 CFR 52.2636 and associated NO_X-related monitoring, recordkeeping, and reporting requirements found in 40 CFR 52.2636(e) through 40 CFR 52.2636(k) will remain in effect for the BART limits and reasonable progress limits will therefore not be impacted upon approval of our proposed revisions.

E. Consultation With Federal Land Managers

There are seven Class I areas in the State of Wyoming. The United States Forest Service manages the Bridger Wilderness, Fitzpatrick Wilderness, North Absaroka Wilderness, Teton Wilderness, and Washakie Wilderness.[106] The National Park Service manages Grand Teton National Park and Yellowstone National Park. The Regional Haze Rule grants the FLMs, regardless of whether an FLM manages a Class I area within the state, a special role in the review of regional haze implementation plans, summarized in section II.D. of this preamble.

Under 40 CFR 51.308(i)(2), Wyoming was obligated to provide the FLMs with an opportunity for consultation in development of the State's SIP revision no less than 60 days prior to the associated public hearing or public comment opportunity. On June 7, 2022, the State of Wyoming informed the FLMs of the State's draft proposed regional haze SIP revision for the Jim Bridger power plant. In doing so, the State provided the FLMs with a copy of the draft regional haze SIP revision and related consent decree [107] and provided the FLMs with 60 days to provide comments as well as the opportunity to discuss the draft SIP during a phone call, if requested.[108] The State received comments from the FLMs, made those comments available during the public comment period, and responded to the comments in the final SIP submittal.[109] Therefore, we propose to find that Wyoming met its obligations for consultation in development of the State's draft regional haze SIP revision.

V. Clean Air Act Section 110(*l*)

Under CAA section 110(*l*), the EPA cannot approve a plan revision ''if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 7501 of this title), or any other applicable requirement of this chapter.'' [110] The previous sections of the document explain how the Wyoming 2022 SIP revision will comply with applicable regional haze requirements and general implementation plan requirements, such as enforceability, and that annual NO_X emissions are not greater than what is currently allowed in the SIP. There are no National Ambient Air Quality Standard (NAAQS) nonattainment areas in Wyoming for nitrogen dioxide (NO_2) or PM.[111] Likewise, there are also no NAAQS nonattainment areas in the State of Wyoming for SO_2.

With respect to ozone NAAQS nonattainment areas,[112] the Upper Green River Basin ozone nonattainment area covers areas in Lincoln, Sublette, and Sweetwater counties and was designated nonattainment for the 2008 8-hour ozone NAAQS on July 20, 2012.[113] On May 4, 2016, the EPA finalized a determination of attainment for the Upper Green River Basin nonattainment area.[114] Based on the most recent 3 years of valid data at that time (2012–2014), the Upper Green River Basin attained the 2008 8-hour ozone NAAQS by the attainment date of July 20, 2015, and continued to attain that standard during the most recent monitoring period (from 2020 to 2022).[115] Thus, the Upper Green River Basin is attaining the 2008 8-hour ozone NAAQS at current emissions levels which would not increase under Wyoming's 2022 SIP revision because the proposed action results in emissions reductions equivalent to the previous SIP. In addition, the Upper Green River Basin is not a nonattainment area for the 2015 ozone NAAQS as it had an attaining design value of 63 ppb [116] at the time of the designations in 2017. The current 2020–2022 preliminary design value is also attaining with a value of 67 ppb.[117]

Therefore, we propose to find that the Wyoming 2022 SIP revision is not anticipated to interfere with applicable requirements of the CAA and therefore CAA section 110(*l*) does not prohibit approval of this SIP.

VI. Summary of the EPA's Proposed Action

In this action, the EPA is proposing to approve Wyoming's 2022 SIP revision for the NO_X reasonable progress analysis and determination for Jim Bridger Units 1 and 2, including the associated emission and operational limitations, compliance dates, and monitoring, recordkeeping and reporting requirements as well as the separate monthly and annual NO_X and SO_2 emissions limits. Specifically, the EPA is proposing to approve the following as federally enforceable elements of the Wyoming 2022 SIP revision for Jim Bridger Units 1–4:

- The NO_X emission limits found in Wyoming air quality permit #P0036941 (Condition 9 for NO_X lb/MMBtu and tons/year emission limits) for Units 1 and 2.
- The NO_X and SO_2 emission limits found in Wyoming air quality permit #P0025809 (Condition 7 for lb/hr and Condition 9 for tons/year) for Units 1–4.
- The operational limit on annual heat input (based on a 12-month rolling average of hourly heat input values) found in Wyoming air quality permit #P0036941 (Condition 19).
- The compliance dates found in Wyoming air quality permit #P0036941 (Conditions 11 and 16) requiring that Units 1 and 2 comply with NO_X emission rates in lb/MMBtu (30-day rolling average) and tons/year as well as an annual heat input in MMBtu/year; and permit #P0025809 (Conditions 7 and 9) requiring that Units 1–4 comply with the NO_X and SO_2 emission limits in lb/hr and tons/year, respectively.

day rolling basis, while the monitoring, recordkeeping, and reporting requirements for the monthly and annual NO_X and SO_2 emissions limits in Permit #P0025809 assume lb/hr rates for NO_X and SO_2 on a monthly-block basis.

[106] Our 2014 final rule modeled visibility improvement for six Class I areas in Wyoming (Bridger Wilderness, Fitzpatrick Wilderness, Teton Wilderness, Washakie Wilderness, Grand Teton National Park, and Yellowstone National Park) as well as three additional Class I areas in Colorado (Mt. Zirkel Wilderness, Rawah Wilderness, and Rocky Mountain National Park).

[107] Consent Decree, State of Wyoming v. PacifiCorp, Docket No. 2022–CV–200–333. First Judicial District Court, Laramie, Wyoming. (February 14, 2022).

[108] Email from Amber Potts, Wyoming Department of Environmental Quality, to Federal Land Managers. June 7, 2022.

[109] Per the CAA 169A(d), states shall include a summary of the conclusions and recommendations of the FLMs in the notice to the public.

[110] Note that ''reasonable further progress'' as used in CAA section 110(*l*) is a reference to that term as defined in section 301(a) (*i.e.,* 42 U.S.C. 7501(a)), and as such means reductions required to attain the NAAQS set for criteria pollutants under section 109. This term as used in section 110(*l*) (and defined in section 301(a)) is *not* synonymous with ''reasonable progress'' as that term is used in the regional haze program. Instead, section 110(*l*) provides that the EPA cannot approve plan revisions that interfere with regional haze requirements (including reasonable progress requirements) insofar as they are ''other applicable requirement[s]'' of the CAA.

[111] See Wyoming 2020 SIP revision at 13.

[112] NO_X is an ozone precursor.

[113] 77 FR 30088 (May 21, 2012).

[114] 81 FR 26697 (May 4, 2016).

[115] EPA, ''Air Quality System Preliminary Design Value Report,'' October 5, 2022.

[116] EPA, ''Ozone Design Values Report, 2016,'' October 2, 2017.

[117] EPA, ''Upper Green River Basin 2020–2022 Preliminary Ozone Design Value Report,'' Row 18, October 5, 2022.

• The monitoring, recordkeeping and reporting requirements found in Wyoming air quality permit #P0036941 (Conditions 4, 5, 6, 10.i.1, 10.i.4, 17, 18, 19, 20, and 21) and permit #P0025809 (Condition 8.i and 9).

If the above elements are finalized into the SIP, the 0.07 lb/MMBtu NO_X long-term emission limits for Jim Bridger Units 1 and 2 will be removed from the SIP and replaced with the 0.12 lb/MMBtu NO_X reasonable progress emission limit and associated NO_X emissions and heat input limits, while the 0.07 lb/MMBtu NO_X long-term strategy emission limits will remain for Units 3 and 4.

We are also proposing to approve the following non-enforceable elements of the Wyoming 2022 SIP revision for:

• Jim Bridger Units 1 and 2, *Chapters 7.3.6 PacifiCorp Jim Bridger Electric Generating Station* of Wyoming's regional haze narrative, *Addressing Regional Haze Visibility Protection For The Mandatory Federal Class I Areas Required Under 40 CFR 51.309,* which contain a source-specific NO_X reasonable progress analysis.

• Jim Bridger Units 1–4, *Chapter 8.3.3 Long-Term Control Strategies for BART Facilities* (Jim Bridger Power Plant (Units 1 and 2) only) of Wyoming's regional haze narrative, *Addressing Regional Haze Visibility Protection For The Mandatory Federal Class I Areas Required Under 40 CFR 51.309,* which contains (1) plant-wide monthly NO_X and SO_2 emission limits and an annual emissions cap for NO_X plus SO_2;[118] and (2) a compliance date to convert Units 1 and 2 to natural gas along with an associate NO_X 30-day rolling average (lb/MMBtu), NO_X annual emission cap (tons/year), and annual heat input (MMBtu/year).

TABLE 7—LIST OF WYOMING SIP AMENDMENTS THAT THE EPA IS PROPOSING TO APPROVE

Conditions of Wyoming Air Quality Permit #P0036941 Proposed for Approval
Condition 9 for NO_X lb/MMBtu and tons/year emission limits; Condition 11 for fuel compliance date; Conditions 16, 19 for heat input limit and associated compliance date; and Conditions 4, 5, 6, 10.i.1, 10.i.4, 17, 18, 19, 20, and 21 for associated monitoring, recordkeeping, and reporting requirements.
Conditions of Wyoming Air Quality Permit #P0025809 Proposed for Approval
Condition 7 (lb/hr emission limits) and 9 (tons/year emission limits) for NO_X and SO_2 monthly-block and annual emission limits and compliance dates, and Condition 8.i for associated monitoring, recordkeeping, and reporting requirements.
Amended Sections of Wyoming Regional Haze SIP Narrative Proposed for Approval [1]
Chapter 7.3.6, Chapter 8.3.3 (Jim Bridger Power Plant (Units 1 and 2) only)

[1] Wyoming 2022 SIP revision.

Together these proposed amendments modify:

• 40 CFR 52.2620(d)—air quality permit amendments adding (1) the requirement to convert to natural gas and associated NO_X emissions limits and annual heat input for Jim Bridger Units 1 and 2, (2) the monthly and annual NO_X and SO_2 emission limits for Jim Bridger Units 1–4, and (3) associated monitoring, recordkeeping and reporting requirements;

• 40 CFR 52.2620(e)—regional haze narrative amendments adding (1) a source-specific NO_X reasonable progress analysis and determination for Jim Bridger Units 1 and 2 along with associated NO_X emission limits and annual heat input, and (2) the monthly and annual NO_X and SO_2 emission limits for Jim Bridger Units 1–4; and

• 40 CFR 52.2636(c)–(d)—NO_X and SO_2 emissions limits, heat input, and associated compliance dates for Jim Bridger Units 1–4.

The proposed revisions to both 40 CFR 52.2620 and 40 CFR 52.2636 are included in this document. We are not proposing to change any other regulatory text in 40 CFR 52.2620 or 40 CFR 52.2636.

VII. Incorporation by Reference

In this document, the EPA is proposing to include regulatory text in an EPA final rule that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the SIP amendments described in section VI. of this preamble. The EPA has made, and will continue to make, these materials generally available through *https://www.regulations.gov* (refer to docket EPA–R08–OAR–2022–0536) and at the EPA Region 8 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VIII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 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 requirements of the CAA and applicable Federal regulations. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this 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

[118] The revised text in Chapter 8 refers only to Jim Bridger Units 1 and 2. However, the monthly and annual NO_X and SO_2 emissions limits contained within the permit referenced, #P0025809, apply to Units 1–4 (Wyoming 2022 SIP revision at 8).

safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

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 proposed 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. Due to the nature of the action being taken here, this action 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.

List of Subjects in 40 CFR Part 52

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

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

Dated: April 2, 2024.

KC Becker,

Regional Administrator, Region 8.

For the reasons stated in the preamble, the Environmental Protection Agency proposes to amend 40 CFR part 52 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 ZZ—Wyoming

■ 2. In § 52.2620:

■ a. The table in paragraph (d) is amended by adding the entries ''Jim Bridger Units 1 and 2'' and ''Jim Bridger Units 1–4'' in alphabetical order at the end of the table.

■ b. The table in paragraph (e) is amended by revising the entry ''(25) XXV''.

The additions and revision read as follows:

§ 52.2620 Identification of plan.

* * * * *

(d) * * *

Regulation	Rule title	State effective date	EPA effective date	Final rule citation/ date	Comments
*	*	*	*	*	* *
Jim Bridger Units 1 and 2.	Air Quality SIP Permit containing conversion to natural gas requirements, P0036941.	August 29, 2023 ..	[date 30 days after date of publication of the final rule in the **Federal Register**].	[**Federal Register** citation of the final rule], [date of publication of the final rule in the **Federal Register**].	Only the following permit provisions: NO_X emission limits (Condition 9 for NO_X lb/MMBtu and tons/year emission limits); emission limit compliance date (Condition 11 for fuel compliance date); heat input limit and associated compliance date (Condition 16, 19); and associated monitoring, recordkeeping, and reporting requirements (Conditions 4, 5, 6, 10.i.1, 10.i.4, 17, 18, 19, 20, and 21).

Regulation	Rule title	State effective date	EPA effective date	Final rule citation/ date	Comments
Jim Bridger Units 1–4.	Air Quality SIP Permit containing additional requirements, P0025809.	5/5/2020	[date 30 days after date of publication of the final rule in the **Federal Register**].	[**Federal Register** citation of the final rule], [date of publication of the final rule in the **Federal Register**].	Only the following permit provisions: NO_X and SO_2 monthly-block and annual emission limits (P0025809 Condition 7 for lb/hr emission limits, and Condition 9 for tons/year emission limits); emission limit compliance dates (P0025809, Conditions 7 and 9); and associated monitoring, recordkeeping, and reporting requirements (P0025809, Condition 8.i).

(e) * * *

Rule No.	Rule title	State effective date	EPA Effective date	Final rule citation/date	Comments
*	*	*	*	*	*
(25) XXV	Wyoming State Implementation Plan for Regional Haze for 309(g).	5/23/22	[date 30 days after date of publication of the final rule in the **Federal Register**].	[**Federal Register** citation of the final rule], [date of publication of the final rule in the **Federal Register**].	Excluding portions of the following: Chapters 6.4, 6.5.7, 6.5.8, and 7.5. EPA disapproved (1) the NO_X BART determinations for (a) Laramie River Units 1–3, (b) Dave Johnston Unit 3, and (c) Wyodak Unit 1; (2) the State's monitoring, recordkeeping, and reporting requirements for BART units; and (3) the State's reasonable progress goals.
*	*	*	*	*	*

■ 3. In § 52.2636:
■ a. Revise table 1 in paragraph (c)(1).
■ b. Add tables 3 and 4 in numerical order in paragraph (c)(1).
■ c. Revise paragraph (d)(1).

The revisions and additions read as follows:

§ 52.2636 Implementation plan for regional haze.

(c) * * *
(1) * * *

TABLE 1 TO § 52.2636

[Emission limits for BART units for which the EPA approved the State's BART and Reasonable Progress determinations]

Source name/BART unit	PM emission limits—lb/MMBtu	NO_X emission limits–lb/MMBtu (30-day rolling average)
FMC Westvaco Trona Plant/Unit NS–1A	0.05	0.35
FMC Westvaco Trona Plant/Unit NS–1B	0.05	0.35
TATA Chemicals Partners (General Chemical) Green River Trona Plant/Boiler C	0.09	0.28
TATA Chemicals Partners (General Chemical) Green River Trona Plant/Boiler D	0.09	0.28
Basin Electric Power Cooperative Laramie River Station/Unit 1	0.03	N/A
Basin Electric Power Cooperative Laramie River Station/Unit 2	0.03	N/A
Basin Electric Power Cooperative Laramie River Station/Unit 3	0.03	N/A
PacifiCorp Dave Johnston Power Plant/Unit 3	0.015	N/A
PacifiCorp Dave Johnston Power Plant/Unit 4	0.015	0.15
PacifiCorp Jim Bridger Power Plant/Unit 1[1][2]	0.03	0.26/0.12
PacifiCorp Jim Bridger Power Plant/Unit 2[1][2]	0.03	0.26/0.12
PacifiCorp Jim Bridger Power Plant/Unit 3[1][2]	0.03	0.26/0.07
PacifiCorp Jim Bridger Power Plant/Unit 4[1][2]	0.03	0.26/0.07
PacifiCorp Naughton Power Plant/Unit 1	0.04	0.26
PacifiCorp Naughton Power Plant/Unit 2	0.04	0.26
PacifiCorp Wyodak Power Plant/Unit 1	0.015	N/A

[1] The owners and operators of PacifiCorp Jim Bridger Units 1, 2, 3, and 4 shall comply with the NO_X emission limit for BART of 0.26 lb/MMBtu and the PM emission limit for BART of 0.03 lb/MMBtu and other requirements of this section by March 4, 2019. The owners and operators of PacifiCorp Jim Bridger Units 1, 2, 3, and 4 shall comply with the NO_X emission limit for reasonable progress of 0.12 lb/MMBtu by January 1, 2024, for Jim Bridger Units 1 and 2 and 0.07 lb/MMBtu by December 31, 2015, for Unit 3, and December 31, 2016, for Unit 4.

[2] Additional NO_X and SO_2 emissions control measures and associated compliance dates for Jim Bridger Units 1–4, are found in § 52.2636(c) Tables 3 and 4.

* * * * *

TABLE 3 TO § 52.2636

[NO_X and SO_2 Emission Limits for Jim Bridger Units 1–4, Effective January 1, 2022]

Month	Total units 1–4 NO_X emission limit (monthly average basis) [1] [2] (lb/hour)	Total units 1–4 SO_2 emission limit (monthly average basis) [1] [2] (lb/hour)
January	2,050	2,100
February	2,050	2,100
March	2,050	2,100
April	2,050	2,100
May	2,200	2,100
June	2,500	2,100
July	2,500	2,100
August	2,500	2,100
September	2,500	2,100
October	2,300	2,100
November	2,030	2,100
December	2,050	2,100

[1] Effective January 1, 2022, through December 31, 2023.
[2] In addition to monthly NO_X and SO_2 emission limits, an annual, plant-wide NO_X plus SO_2 emissions cap of 17,500 tons per year is effective January 1, 2022, through December 31, 2023.

TABLE 4 TO § 52.2636

[NO_X Emission Limits and Heat Input for Jim Bridger Units 1–2, Effective January 1, 2024]

Unit	NO_X emission limit (tons/year)	Heat input (MMBtu/year)
Unit 1	1,314	21,900,000
Unit 2	1,314	21,900,000

* * * * *

(d) *Compliance date.* (1) The owners and operators of PacifiCorp Jim Bridger Units 1, 2, 3, and 4 shall comply with the NO_X emission limit of 0.26 lb/MMBtu and PM emission limit of 0.03 lb/MMBtu and other requirements of this section by March 4, 2019. The owners and operators of PacifiCorp Jim Bridger Units 1 and 2 shall comply with the NO_X emission limit of 0.12 lb/MMBtu by January 1, 2024. The owners and operators of PacifiCorp Jim Bridger Units 3 and 4 shall comply with the NO_X emission limit of 0.07 lb/MMBtu by: December 31, 2015, for Unit 3, and December 31, 2016, for Unit 4. The owners and operators of PacifiCorp Jim Bridger Units 1, 2, 3, and 4 shall comply with the NO_X and SO_2 emission limits contained in § 52.2636(c) Table 3 by January 1, 2022. The owners and operators of PacifiCorp Jim Bridger Units 1 and 2 shall comply with NO_X emission and heat input limits contained in § 52.2636(c) Table 4 by January 1, 2024.

* * * * *

[FR Doc. 2024–07414 Filed 4–9–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2023–0441; FRL–11837–01–R8]

Air Plan Approval; Colorado; 2017 Base Year Inventory and Emission Statement Rule Marginal Nonattainment Requirements, Revisions to Regulation 3

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve state implementation plan (SIP) revisions submitted by the State of Colorado to meet certain Clean Air Act (CAA) requirements related to the Denver Metro/North Front Range (DMNFR) area's classification as Marginal nonattainment for the 2015 8-hour ozone national ambient air quality standards (NAAQS). The revisions contain a base year emissions inventory for the nonattainment area and certify that the State's existing Air Pollutant Emissions Notice (APEN) program fulfills the CAA's emission statement rule requirement. The revisions also include a new requirement for annual certification of APEN reported emissions. Unrelated to Colorado's Marginal ozone nonattainment obligations, EPA is also proposing to approve the State's revisions to Regulation 3 concerning an update to the date of incorporation by reference of global warming potentials used in the computation of the carbon dioxide equivalent for comparing emissions from various greenhouse gases (GHGs). EPA is taking this action pursuant to the CAA.

DATES: Written comments must be received on or before May 10, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2023–0441, to the Federal Rulemaking Portal: *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *www.regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit

electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically in *www.regulations.gov.* To reduce the risk of COVID–19 transmission, for this action we do not plan to offer hard copy review of the docket. Please email or call the person listed in the **FOR FURTHER INFORMATION CONTACT** section if you need to make alternative arrangements for access to the docket.

FOR FURTHER INFORMATION CONTACT: Matthew Lang, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD–IO, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6709, *lang.matthew@epa.gov.*

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

Table of Contents

I. Background

EPA determined decades ago that ground-level ozone endangers public health and welfare. Ground-level ozone forms when nitrogen oxides (NO_X) and volatile organic compounds (VOC) react in the presence of sunlight. Referred to as ozone precursors, these two pollutants are emitted by many types of pollution sources, including motor vehicles, power plants, industrial facilities, and nonpoint [1] sources. Scientific evidence indicates that adverse human health effects occur following exposure to ozone. These effects are more pronounced in children and adults with lung disease. Breathing air containing ozone can reduce lung function and inflame airways, which can increase respiratory symptoms and aggravate asthma or other lung diseases. In 1979, in response to this scientific evidence, EPA promulgated the first ozone NAAQS, the 0.12 parts per million (ppm) 1-hour ozone NAAQS.[2]

EPA has strengthened the ozone NAAQS over the years. In 1997, EPA promulgated a revised ozone NAAQS of 0.08 ppm, averaged over eight hours, which it determined was more protective of public health than the 1979 standard.[3] In 2008, EPA revised the 8-hour ozone NAAQS from 0.08 to 0.075 ppm.[4] In 2015, the Agency further strengthened the 8-hour ozone NAAQS to 0.070 ppm.[5]

The DMNFR area is in nonattainment status for both the 2008 and the 2015 ozone NAAQS. It is currently classified as a Severe nonattainment area under the 2008 standard,[6] which is not at issue in this rulemaking. Effective August 3, 2018, EPA designated the DMNFR area as Marginal nonattainment for the more stringent 2015 ozone NAAQS (2015 DMNFR Nonattainment Area).[7] The 2015 DMNFR Nonattainment Area includes Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, Jefferson, and Weld counties as well as a portion of Larimer County.[8] While EPA has since reclassified the 2015 DMNFR Nonattainment Area as Moderate for failing to attain the 2015 ozone NAAQS by the area's Marginal attainment date,[9] Colorado must still meet the CAA requirements applicable to Marginal ozone nonattainment areas.

This proposed rule addresses only the base year inventory and emission statement rule requirements related to the Marginal nonattainment classification, as described further below, including SIP revisions to address EPA's revised designation incorporating all of Weld County into the nonattainment area.[10] Requirements stemming from the DMNFR Nonattainment Area's Moderate nonattainment classification for the 2015 ozone NAAQS and the Severe classification for the 2008 ozone NAAQS will be addressed in separate EPA rulemakings.

The CAA and its implementing regulations—in particular, the 2015 ozone NAAQS SIP Requirements Rule,[11] codified at 40 CFR part 51, subpart CC—establish several requirements for ozone nonattainment areas. Section 172(c)(3) of the CAA, which applies generally to states with areas classified as nonattainment for any NAAQS, requires submission of comprehensive, accurate, and current inventories of actual emissions from all sources of relevant pollutants in Marginal nonattainment areas.[12] Specific to areas classified as Marginal ozone nonattainment, section 182(a)(1) requires states to submit a base year inventory of ozone precursors (NO_X and VOC) within two years of the nonattainment designation.[13] Section 182(a)(3)(B) directs states to implement an emission statement rule requiring certain stationary sources to report their emissions of NO_X and VOC.[14]

[1] Nonpoint sources are also sometimes referred to as area sources.

[2] 44 FR 8202 (Feb. 8, 1979).

[3] 62 FR 38856 (July 18, 1997).

[4] 73 FR 16436 (Mar. 27, 2008).

[5] 80 FR 65292 (Oct. 26, 2015).

[6] 40 CFR 81.306; 87 FR 60926, 60933 (Oct. 7, 2022).

[7] 83 FR 25776, 25792 (June 4, 2018).

[8] As detailed in this proposed rule, EPA initially excluded part of Weld County from the 2015 DMNFR Nonattainment Area, but, in response to a court decision, subsequently expanded its air quality designation to include all of Weld County.

[9] 40 CFR 81.306; 87 FR 60897, 60916 (Oct. 7, 2022).

[10] *See* 86 FR 67864, 67869 (Nov. 30, 2021) (noting that states affected by the revised air quality designations would ''work with their respective EPA Regional office to submit any necessary supplements or revisions to fulfill the Marginal area SIP revision requirements associated with the nonattainment boundaries in this final action as expeditiously as practicable'').

[11] 83 FR 62998 (Dec. 6, 2018). The SIP Requirements Rule established implementation requirements for the 2015 ozone NAAQS, including requirements for base year emissions inventories.

[12] 42 U.S.C. 7502(c)(3).

[13] 42 U.S.C. 7511a(a)(1); 40 CFR 51.1315(a); 40 CFR 51.1300(p) (defining ''base year inventory'').

[14] 42 U.S.C. 7511a(a)(3)(B).

Emissions inventories and emission statements provide data that inform a variety of air quality planning tasks. States use emissions inventories to establish baseline emissions levels, calculate emissions reduction targets needed to attain the NAAQS, determine emissions inputs for ozone air quality modeling analyses, and track emissions over time to determine progress toward achieving air quality and emissions reduction goals. EPA has issued guidance to assist states in developing their emission inventories; states retain the discretion to adopt approaches on a case-by-case basis that differ from that guidance where appropriate.[15] Emission statements provide important information that states may use to develop emissions inventories for air quality planning, to support permitting efforts, and to assist in demonstrating source compliance.[16]

On July 27, 2020, through the Colorado Department of Public Health and Environment (CDPHE), Colorado submitted a SIP revision titled ''2015 Ozone National Ambient Air Quality Standard (NAAQS)—Denver Metro/North Front Range Marginal Nonattainment Area Requirements'' (2020 SIP Submittal) to satisfy, in part, the emissions inventory requirements under CAA sections 172(c)(3) and 182(a)(1) and the emission statement requirement of CAA section 182(a)(3)(B).[17] Colorado met the CAA's reasonable notice and public hearing requirements [18] for the 2020 SIP Submittal through notice in the Denver Legal Post on May 23, 2020, and a public hearing on June 18, 2020.[19] However, before EPA proposed action on the 2020 SIP Submittal, the 2015 DMNFR Nonattainment Area boundary, and specifically the partial nonattainment designation of Weld County, was remanded without vacatur in *Clean Wisconsin* v. *EPA,* 964 F.3d 1145 (D.C. Cir. 2020). EPA then issued a revised designation to include the whole of Weld County in the nonattainment area and noted that states should work with their respective EPA regional office to submit any necessary supplements or revisions to fulfill Marginal area SIP requirements.[20]

In response, on June 26, 2023, CDPHE submitted a SIP revision titled ''Ozone State Implementation Plan (SIP) and Associated Regulations: Regulation Number 3, Regulation Number 7, Regulation Number 21, Common Provisions, and Air Quality Standards, Designations, and Emissions Budgets'' (2023 SIP Submittal).[21] Among other components,[22] the 2023 SIP Submittal includes rule revisions to address the outstanding Marginal area SIP requirements for the 2015 DMNFR Nonattainment Area, including an updated base year inventory reflecting EPA's revised boundary designation of the 2015 DMNFR Nonattainment Area. Colorado met the CAA's reasonable notice and public hearing requirements through notice in the Denver Legal Post on September 17, 2022, and a public hearing on December 13–16, 2022.[23]

Finally, for purposes of administrative efficiency, EPA is proposing to act on Colorado SIP revisions unrelated to the State's Marginal ozone nonattainment obligations. On March 22, 2021, CDPHE submitted a SIP revision (''2021 SIP Submittal'') that included revisions to Regulation 3, Part A to update the date of incorporation by reference of global warming potentials (GWPs) as defined in 40 CFR part 98, subpart A, table A–1.[24] Colorado met the CAA's reasonable notice and public hearing requirements through notice in the Denver Legal Post on September 26, 2020, and a public hearing on December 16–18, 2020.[25] Although EPA approved other elements of the 2021 SIP Submittal in a March 27, 2023 final rule, we did not finalize action on the revisions updating the date of incorporation by reference of GWPs for the reasons discussed in that final rule [26] and below. In addition, Colorado's 2023 SIP Submittal included revisions to Regulation 3 related to the incorporation by reference of GWPs that build upon the aforementioned 2021 SIP Submittal revisions. We now propose to act concurrently on the Regulation 3 GWP revisions from both the 2021 SIP Submittal and subsequent 2023 SIP Submittal.

II. The EPA's Evaluation of Colorado's SIP Submittals

A. Base Year Emissions Inventory

Under CAA sections 172(c)(3) and 182(a)(1), Colorado must submit a comprehensive, accurate, and current accounting of actual emissions of ozone precursors from all sources (point, nonpoint, nonroad mobile, and on-road mobile sources) in the 2015 DMNFR Nonattainment Area. EPA's SIP Requirements Rule specifies that the inventory year shall be selected consistent with the baseline year for the Reasonable Further Progress (RFP) plan under 40 CFR 51.1310(b),[27] which EPA identified as 2017.[28] The rule also requires states to report ''ozone season day emissions'' in the base year inventory,[29] as described in other EPA regulations:

> Ozone season day emissions means an average day's emissions for a typical ozone season work weekday. The state shall select, subject to EPA approval, the particular month(s) in the ozone season and the day(s) in the work week to be represented, considering the conditions assumed in the development of RFP plans and/or emissions budgets for transportation conformity.[30]

Based on EPA's 2017 Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations (2017 Emissions Inventory Guidance), the selected ozone season day should be representative of the conditions leading to nonattainment.[31]

To satisfy these requirements, Colorado included a 2017 base year inventory in its 2020 SIP Submittal.[32] Following EPA's revised designation of the 2015 DMNFR Nonattainment Area, Colorado then submitted a revised base year inventory in its 2023 SIP Submittal as a superseding supplement to its 2020 SIP Submittal to account for emissions from the revised nonattainment area, including the whole of Weld County.[33]

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[15] U.S. EPA, ''Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations,'' EPA–454/B–17–002 (May 2017), 1 (2017 Emissions Inventory Guidance).

[16] U.S. EPA, ''Draft Guidance on the Implementation of an Emission Statement Program'' (July 1992), 1.

[17] 2020 SIP Submittal, ''01-Submittal Letter to EPA.'' The letter is dated July 6, 2020, but the SIP was submitted to EPA on July 27, 2020. The 2020 SIP Submittal was deemed complete by operation of law six months after submission.

[18] 42 U.S.C. 7410(a)(1), (l); 40 CFR 51.102.

[19] 2020 SIP Submittal, ''03-Denver Post Legal Ad'' and ''04-Meeting Agenda.''

[20] 86 FR 67864, 67869. The revised designation was affirmed in *Board of County Commissioners of Weld County, Colorado* v. *EPA,* 72 F.4th 284, 289–92 (D.C. Cir. 2023).

[21] 2023 SIP Submittal, Document Set 1 of 7, ''00_Submittal Letter to EPA_Ozone SIP.'' The letter is dated June 22, 2023, but the SIP was submitted to EPA on June 26, 2023. EPA determined the 2023 SIP Submittal to be complete on September 7, 2023.

[22] The 2023 SIP Submittal includes elements of Colorado's 2008 Severe Ozone SIP and its 2015 Moderate Ozone SIP. EPA will take action on those SIP components in a separate rulemaking.

[23] 2023 SIP Submittal, Document Set 1 of 7, ''05_Denver Post Legal Ad'' and ''06_Meeting Agenda.''

[24] 2021 SIP Submittal, Document Set 1 of 6, ''01_Submittal Letter to EPA—121820_Ozone SIP, Reg 3, Reg 7, Air Quality Stds_signed''; ''03_Hearing Notice & Proposed Language_R3.'' The 2021 SIP Submittal was deemed complete by operation of law six months after submission.

[25] 2021 SIP Submittal, Document Set 1 of 6, ''05_Denver Post Legal Ad'' and ''06_Meeting Agenda.''

[26] 88 FR 18054, 18054 (Mar. 27, 2023).

[27] 40 CFR 51.1315(a).

[28] 83 FR 62998, 63005.

[29] 40 CFR 51.1315(c).

[30] 40 CFR 51.1300(q).

[31] 2017 Emissions Inventory Guidance, 75.

[32] 2020 SIP Submittal, ''08-Denver 2017 Ozone NAA Inventory.''

[33] 2023 SIP Submittal, Document Set 6 of 7, ''2017 Baseline Inventory Update TSD FINAL,'' 1–2

Consistent with the SIP Requirements Rule, the revised inventory uses 2017 as the base year for SIP planning purposes.[34] It was developed for a typical July day in 2017 to estimate NO_X and VOC emissions during the peak summer ozone season, which is representative of the conditions leading to nonattainment in the 2015 DMNFR Nonattainment Area.[35] Consistent with the 2017 Emissions Inventory Guidance, the inventory estimates emissions from all major source categories including point sources, nonpoint sources, on-road and nonroad mobile sources, and biogenic sources.[36] Additional information describing Colorado's general methodology for compiling its emissions inventory may be found in the State's inventory technical support document included in the 2023 SIP Submittal.[37]

Tables 1 and 2 of this proposed rule show 2017 ozone season day emissions for the 2015 DMNFR Nonattainment Area in units of tons per day (tpd). Table 1 summarizes anthropogenic VOC and NO_X emissions by source sector. Table 2 summarizes biogenic VOC and NO_X emissions, including those from fire and other naturally occuring emissions not included as anthropogenic emissions in Table 1. The anthropogenic portion of the base year inventory for a nonattainment area may serve as the Rate of Progress (ROP)/RFP baseline inventory for Moderate and higher nonattainment classifications.[38] The following sections II.A.1–II.A.6 describe the State's inventory of emissions from the various source sectors in more detail.

TABLE 1—DENVER METRO/NORTH FRONT RANGE NONATTAINMENT AREA 2017 VOC AND NO_X BASE YEAR ANTHROPOGENIC EMISSIONS INVENTORY

[Tons/Day] [39]

Source type	NO_X	VOC
Point	24.2	21.9
Nonpoint	0.1	80.1
On-road Mobile	57.4	48.1
Nonroad Mobile	42.9	44.5
Oil & Gas	78.2	211.1
Total	202.9	405.7

TABLE 2—DENVER METRO/NORTH FRONT RANGE NONATTAINMENT AREA 2017 VOC AND NO_X BASE YEAR BIOGENIC EMISSIONS

[Tons/Day] [40]

Source type	NO_X	VOC
Biogenic	26.5	419.0

1. Point Source Emissions

Point sources are large, stationary, identifiable sources of emissions that release pollutants into the atmosphere. In its 2017 base year inventory, the State included point source emissions from source categories including power plants/electric generating units, external combustion boilers, industrial processes, internal combustion sources, petroleum/solvent evaporation not associated with the oil and gas industry, and waste disposal.[41] The SIP Requirements Rule provides that emissions from point sources shall be reported according to the thresholds of EPA's Air Emissions Reporting Requirements (AERR).[42] The 2017 Emissions Inventory Guidance directs those preparing point source inventories to volume 2 of the Emissions Inventory Improvement Program technical report series for information on point source inventory methodology.[43] This resource describes the three principal methods for estimating point source emissions as source testing, mass balance calculations, and emission factors, with a fourth method utilizing engineering calculations if the principal methods are not possible.[44]

Colorado obtained its point source data from the APEN database, the State's emissions reporting system for stationary sources.[45] Colorado requires an APEN to be filed for emission points in a nonattainment area with uncontrolled actual emissions of one ton per year or more of any criteria pollutant that the area is designated nonattainment for.[46] In order of preferred methodology, APEN emission estimates are based on actual test data or, in the absence of such data, on mass balance calculations, published emission factors, or engineering calculations.[47] Since Colorado's base year inventory is consistent with the reporting thresholds in the AERR and uses methods for estimating emissions recommended by EPA guidance, the base year inventory adequately addresses emissions from the point source category.

2. Nonpoint Source Emissions

Nonpoint sources are sources of pollution that are small and numerous and that have not been inventoried as specific point sources or mobile sources. They include a wide range of categories such as coatings, household and personal care products, pesticides, automotive aftermarket products, and sealants. Inventorying nonpoint sources involves grouping them by category and estimating their emissions collectively using one methodology.

The State developed the nonpoint source emissions inventory [48] from the 2016v2 EPA modeling platform,[49] which includes emission inventories for 2016 and 2023. To establish emissions for 2017 from the 2016v2 platform, the State used a linear interpolation from 2016 to 2023. Because a portion of Larimer County is not part of the 2015 DMNFR Nonattainment Area, the State scaled the whole-county emissions by the ratio of the county population residing within the nonattainment area boundary based on 2020 census block data—0.9776—to determine an accurate emissions contribution for the relevant part of Larimer County. The nonpoint source portion of Colorado's emissions inventory includes source categories addressed in the nonpoint portion of the inventories developed for EPA's 2016v2 platform. Colorado used EPA estimates for the nonpoint source category and apportioned partial county emissions using methods consistent with the 2017 Emissions Inventory Guidance.[50]

("2017 Baseline Inventory Update TSD"); 2023 SIP Submittal, Document Set 6 of 7, "APCD_FINAL_SIP–2015," ch. 3 ("Revised Milestone Emission Inventory").

[34] 83 FR 62998, 63005, 63011 n.29.

[35] 2017 Baseline Inventory Update TSD, 2.

[36] Id.; Revised Milestone Emission Inventory, ch. 3; 2017 Emissions Inventory Guidance, 19, 81.

[37] 2017 Baseline Inventory Update TSD, 1–14.

[38] 2017 Emissions Inventory Guidance, 41.

[39] Revised Milestone Emission Inventory, 3.2.2.1, tbl. 7.

[40] Id. at 3.2.2.7, tbl. 15.

[41] Colorado's methodology and results for the point source category are described in section 3.2.2.3 of the Revised Milestone Emission Inventory.

[42] 40 CFR 51.1315(d).

[43] 2017 Emissions Inventory Guidance, 81–82.

[44] U.S. EPA, EIIP Technical Report Series Vol. II, Ch. 1: "Introduction to Stationary Point Source Emission Inventory Development" (May 2001), 1.4–1—1.4–3.

[45] Revised Milestone Emission Inventory, 3.2.2.3.

[46] 5 CCR 1001–5:3A.II.B.3.a.

[47] 5 CCR 1001–5:3A.II.B.1.

[48] Colorado's methodology and results for the nonpoint source category are described in section 3.2.2.4 of the Revised Milestone Emission Inventory.

[49] The 2016v2 modeling platform includes a set of emissions inventories, data files, software tools, and scripts used for air quality modeling. Files and technical support documents are available at: *https://www.epa.gov/air-emissions-modeling/2016v2-platform.* The 2016v2 modeling platform draws on data from the 2017 National Emissions Inventory and includes point sources, nonpoint sources, commercial marine vessels, on-road and nonroad mobile sources, and fires for the U.S., Canada, and Mexico. U.S. EPA, "Technical Support Document (TSD): Preparation of Emissions Inventories for the 2016v2 North American Emissions Modeling Platform," EPA–454/B–22–001 (Feb. 2022), 1–2.

[50] 2017 Emissions Inventory Guidance, 72–73, 131–32.

Therefore, the base year inventory adequately addresses emissions from the nonpoint source category.

3. On-Road Mobile Source Emissions

For on-road mobile sources (vehicles operated on public roadways), Colorado's 2017 base year inventory includes emissions from passenger cars, motorcycles, light trucks, refuse/single-unit trucks, short/long-haul trucks, and buses.[51] The State estimated these emissions using EPA's Motor Vehicle Emissions Simulator model version 3 (MOVES3 [52]) along with link-level (roadway) vehicle miles traveled (VMT) provided by the two metropolitan planning organizations that serve the 2015 DMNFR Nonattainment Area, the Denver Regional Council of Governments and the North Front Range Metropolitan Planning Organization. The State based VMT on travel demand model output data from those two organizations and apportioned it to the nonattainment area at the roadway level using Geographic Information Systems. Additional MOVES3 model inputs include vehicle population and age distribution, roadway activity data (speed and time of day), roadway classifications (urban, rural, restricted, unrestricted), fuel properties, inspection and maintenance program characteristics, and hourly meteorology. These model inputs are described in greater detail in EPA's MOVES3 technical guidance.[53] Specific MOVES3 on-road inputs used by the State are identified in Appendix A to the 2017 Baseline Inventory Update Technical Support Document. The State based model inputs on conditions on an average July weekday and used the MOVES3 default fuel formulation. It calculated NO_X and VOC emission factors from MOVES3 for each vehicle type and then multiplied these emission factors by the roadway-level VMT to establish on-road mobile source emissions.

Colorado's on-road mobile source emissions inventory methodology follows the SIP Requirements Rule, which states that ''the latest approved version of the [MOVES] model should be used to estimate emissions from on-road and certain nonroad transportation sources.'' [54] MOVES3 was the latest approved version of the model available at the time that the State developed its 2017 base year inventory. Colorado used local data on vehicle/roadway activity, meteorological conditions, fuel use, and other information characterizing the DMNFR area in 2017, as called for by EPA's 2017 Emissions Inventory Guidance.[55] Therefore, the base year inventory adequately addresses emissions from the on-road mobile source category.

4. Nonroad Mobile Source Emissions

Nonroad mobile sources are mobile sources other than on-road vehicles, including engines used in lawn and garden equipment, commercial and industrial equipment, construction and mining equipment, aircraft, and locomotives. Colorado's 2017 base year inventory used EPA's MOVES-Nonroad model to estimate emissions from nonroad mobile sources in the 2015 DMNFR Nonattainment Area, except for emissions from aviation, locomotives, and rail yards.[56] MOVES-Nonroad exists as a separate module from the on-road modeling capabilities within MOVES3. The specific MOVES3 nonroad inputs used by the State are identified in Appendix A to the 2017 Baseline Inventory Technical Support Document.

The State estimated aviation emissions based on data provided by Denver International Airport (DIA) on fleet composition and activity level, including estimates of emissions from aircraft and ground support equipment such as auxiliary power units. It estimated 2017 aviation emissions from other airports within the nonattainment area using a linear interpolation between the 2016 and 2023 point source emissions from the 2016v2 EPA modeling platform, with DIA emissions excluded. The State also used the 2016v2 modeling platform to estimate emissions from railroad locomotives and rail yard switcher locomotives. It apportioned line-haul locomotive activity levels by track mileage in the nonattainment area. As with the aviation and nonpoint source sectors, Colorado determined 2017 locomotive emissions from a linear trend between 2016 and 2023 estimates from the 2016v2 platform.

As directed in the SIP Requirements Rule,[57] Colorado used the most recently available version of EPA's MOVES-Nonroad model to estimate emissions from certain nonroad sources. Furthermore, Colorado used EPA's own 2016v2 platform to account for emissions from aviation, locomotives, and rail yards not covered by the MOVES-Nonroad model. Finally, for emissions specifically from DIA, the major international airport in the DMNFR nonattainment area, the State relied on data provided from the airport that provides valuable detail regarding DIA emissions. Therefore, the base year inventory adequately addresses emissions from the non-road mobile source category.

5. Oil and Gas Emissions

To inventory oil and gas emissions for its 2023 SIP Submittal, Colorado relied on extensive industry outreach it had conducted between 2015–2018 to develop emission inventories for its 2008 8-hour Ozone DMNFR Nonattainment Area Moderate and Serious SIPs.[58] The State based its approach to the oil and gas emissions component of its inventory on actual and survey data from operators in the specific geological basin.

Colorado's 2017 base year emissions inventory categorizes emissions from the oil and gas sector into point sources, condensate/oil tanks, and nonpoint sources. The State used APEN reported data to determine emissions from point sources, including external combustion boilers, industrial processes, internal combustion sources, petroleum/solvent evaporation, and waste disposal. As described previously, Colorado's APEN reporting program meets the point source thresholds in EPA's AERR and uses methods for estimating emissions consistent with that recommended by EPA guidance. Therefore, the base year inventory adequately addresses the point source component of oil and gas emissions.

Colorado based condensate tank emissions (the largest single source of VOC emissions in the 2017 base year inventory) on APEN reported data, data collected by the Colorado Energy and Carbon Management Commission, and data reported directly by the industry. The State developed site-specific uncontrolled tank emission factors and multiplied them by facilities' production in barrels per year. It then

[51] Colorado's methodology and results for the on-road mobile source category are described in section 3.2.2.6 of the Revised Milestone Emission Inventory and in section 3.1.1 and Appendix A of the 2017 Baseline Inventory Update TSD.

[52] MOVES3 files and technical support documents are available at: *https://www.epa.gov/moves/moves-versions-limited-current-use.*

[53] U.S. EPA, ''MOVES3 Technical Guidance: Using MOVES to Prepare Emission Inventories for State Implementation Plans and Transportation Conformity,'' EPA–420–B–20–052 (Nov. 2020), 26–58.

[54] 83 FR 62998, 63022.

[55] 2017 Emissions Inventory Guidance, 89–90.

[56] Colorado's methodology and results for the nonroad mobile source category are described in section 3.2.2.5 of the Revised Milestone Emission Inventory and in section 3.1.2 and Appendix A of the 2017 Baseline Inventory Update TSD.

[57] 83 FR 62998, 63022.

[58] Colorado's methodology and results for the oil and gas source category are described in section 3.2.2.2 of the Revised Milestone Emission Inventory and in sections 3.2 and 3.3 of the 2017 Baseline Inventory Update TSD.

adjusted the resulting emissions to account for several factors relevant to condensate tanks: a control device's destruction and removal efficiency (DRE) of emissions; the capture efficiency of a control device (a fractional factor intended to discount a control device's DRE to account for actual operating conditions and potential process/device upsets); and the rule effectiveness of regulations (a discount factor that scales a control device's DRE downward to account for a degree of noncompliance with applicable regulations). Since Colorado estimated condensate tank emissions using APEN reported data as well as additional industry-specific data and site-specific emission factors, the base year inventory adequately addresses emissions from the condensate tank portion of the oil and gas component.

Oil and gas nonpoint sources in Colorado's inventory include emissions from certain production equipment and operations (*e.g.,* emissions from well pad engines, truck loading, pneumatic devices, fugitives, blowdowns, process heaters, separator control, and water tank losses). Nonpoint source emissions also result from pre-production operations, including from drill rig engines, hydraulic fracturing engines, drilling mud degassing, and venting during completion operations. The State estimated some of these emissions based on facility/equipment level data reported by 11 producers as part of the stakeholder group it convened in 2018, with emissions scaled to account for the entirety of the 2015 DMNFR Nonattainment Area including the whole of Weld County. Colorado used 2017 NEI data to supplement pre-production emissions for categories not included in producer-submitted data. The State determined drilling mud degassing emissions that were not captured in producer-submitted information, or the 2017 NEI, from EPA's 2016v2 modeling platform by interpolating emissions to 2017 from 2016 and 2023 emissions. Since Colorado relied on basin-specific producer submitted information in developing its oil and gas nonpoint source inventory, in addition to emissions from EPA's own 2017 NEI and 2016v2 platform, the base year inventory adequately addresses emissions from the oil and gas nonpoint source component.

6. Biogenic Emissions

Biogenic emissions come from natural sources. Colorado included a 2017 inventory of biogenic emissions separate from the anthropogenic portion of the inventory.[59] The State used EPA's Biogenic Emissions Inventory System (BEIS), version 3, which EPA developed specifically for estimating biogenic emissions for inventories.[60] Since Colorado used the BEIS model to estimate emissions, as recommended by EPA guidance, the base year inventory adequately addresses emission from the biogenic source category.

7. EPA's Evaluation of the Base Year Emissions Inventory

Based on EPA's review and evaluation of the methodologies, procedures, and results in Colorado's 2017 base year emissions inventory, we propose to find that the inventory meets the requirements of CAA sections 172(c)(3) and 182(a)(1) and the SIP Requirements Rule. The base year inventory is based on the most current and accurate information that was available to the State at the time the inventory was developed. Additionally, the 2017 inventory comprehensively addresses all source categories in the 2015 DMNFR Nonattainment Area including the whole of Weld County and was developed consistent with the relevant EPA emissions inventory regulations, guidance, and models.

B. Certification of Existing Emission Statement Rule and Addition of Annual Certification Requirement

Under CAA section 182(a)(3)(B), Colorado must implement an emission statement rule requiring certain stationary sources that emit VOC or NO_X in the nonattainment area to report on their emissions at least annually.[61] Section 182(a)(3)(B)(ii) specifies that a state may waive this requirement for sources that emit less than 25 tpy of VOC or NO_X if the state includes emissions from such sources in its base year or periodic inventories.[62] If a state already has an EPA-approved emissions reporting regulation in place and determines that it is adequate to meet the requirements of section 182(a)(3)(B), EPA may accept a SIP revision with the state's written certification of that determination in lieu of the state submitting new revised regulations.[63] In its 2020 SIP Submittal, Colorado certified that its existing SIP-approved APEN program meets the source reporting requirements for an emission statement rule under CAA section 182(a)(3)(B).[64]

Colorado's APEN program requires stationary sources with uncontrolled actual emissions of one tpy or more of any individual criteria pollutant for which the area is in nonattainment to file an APEN with the Colorado Air Pollution Control Division (APCD).[65] Emission estimates reported on the APEN must be based on actual test data or, in the absence of such data, on an alternative estimation acceptable to the APCD.[66] Each APEN must include the location of the source; the operator's name and address; the nature of the facility, process or activity; an estimate of the quantity and composition of emissions; and other specified information that varies based on the type of source.[67] An APEN is valid for five years [68] but must be revised (1) annually whenever a significant change in annual actual emissions occurs or (2) upon the occurrence of a triggering event, such as a change in the owner/operator, the installation of new control equipment, or the modification of a permit limitation.[69] To ensure the accuracy of APEN reported emissions between triggering events, Colorado's 2023 SIP Submittal includes revisions to add section II.A.3 to Regulation 3, Part A.[70] The new section II.A.3 requires stationary sources in the ozone nonattainment area with the potential to emit 25 tpy or more of NO_X or VOC to annually certify through an APCD-approved format that annual actual emissions are as reported on the source's APEN.

EPA is proposing to concurrently approve Colorado's certification of its APEN program in its 2020 SIP Submittal, as well as the State's associated addition of the annual certification provision in section II.A.3 to Regulation 3, Part A in its 2023 SIP Submittal, as meeting the requirements for an emission statement rule under CAA section 182(a)(3)(B). As recommended by EPA guidance, the APEN program requires certification of data accuracy and submission of source identification information, operating schedule, emissions information, control equipment information, and

[59] Colorado's methodology and results for the biogenic source category are described in section 3.2.2.7 of the Revised Milestone Emission Inventory.

[60] 2017 Emissions Inventory Guidance, 101–102.

[61] 42 U.S.C. 7511a(a)(3)(B)(i).

[62] 42 U.S.C. 7511a(a)(3)(B)(ii).

[63] 83 FR 62998, 63001–02.

[64] Collectively, the information contained in ''01-Submittal Letter to EPA,'' ''06-Issue Statement,'' and ''07–CAA Elements Table'' in the 2020 SIP Submittal satisfies the certification requirements outlined in the SIP Requirements Rule, 83 FR 62998, 63001–02.

[65] 5 CCR 1001–5:3A.II.A.1, II.B.3.a.

[66] 5 CCR 1001–5:3A.II.B.1.

[67] 5 CCR 1001–5:3A.II.A.1.

[68] 5 CCR 1001–5:3A.II.B.2.

[69] 5 CCR 1001–5:3A.II.C.

[70] 2023 SIP Submittal, Document Set 5 of 7, ''17_Reg Lang & SBAP Adopted_R3.''

process data.[71] Since Colorado's 2017 base year inventory, as described previously in this proposed rule, includes emissions from sources below 25 tpy and is based on acceptable methodologies, Colorado's APEN reporting program satisfies the criteria for the waiver in CAA section 182(a)(3)(B)(ii). Therefore, EPA proposes to approve the State's APEN reporting program under CAA section 182(a)(3)(B).

C. Other Revisions to Regulation 3, Part A

EPA is also proposing action on certain other revisions to Regulation 3 unrelated to the State's Marginal ozone nonattainment obligations. Colorado's 2021 and 2023 SIP Submittals included several revisions to Regulation 3, Parts A, B, and D. In this rulemaking, we are proposing action on the State's revisions to Regulation 3, Part A related to the date of incorporation by reference of global warming potentials (GWPs) and the computation of the mass of carbon dioxide equivalent.[72] The revisions in the 2021 and 2023 SIP Submittals that are described below have State effective dates of February 14, 2021, and February 14, 2023, respectively. The revisions do not interfere with attainment or maintenance of any of the NAAQS and would not interfere with any other applicable requirement of the CAA, and are therefore approvable under CAA section 110(l). EPA will propose action on the remaining revisions to Regulation 3, Parts A, B, and D in a separate rulemaking.

1. Regulation 3, Part A, Sections I.B.10 and 1.B.44.b.(i)—Date of Incorporation by Reference of Global Warming Potentials

Colorado's Regulation 3, Part A, Section I.B.10 defines ''carbon dioxide equivalent'' as a metric used to compare emissions of various greenhouse gases. The metric is based in part on each gas's GWP as codified in 40 CFR part 98, subpart A, table A–1, which Regulation 3 incorporates by reference. Regulation 3, Part A, Section I.B.44.b.(i), which provides conditions under which GHGs are ''subject to regulation,'' makes the same incorporation by reference. In its 2021 SIP Submittal, the State replaced the outdated November 20, 2013 incorporation by reference date with December 11, 2014 in both Sections 1.B.10 and 1.B.44.b.(i).[73] However, while the November 20, 2013 date was removed from Section 1.B.10 in the Code of Colorado Regulations, the revised date was inadvertently omitted, leaving the incorporation by reference without a corresponding date.[74] Colorado's 2023 SIP Submittal corrects that omission.[75] Since December 11, 2014, is the most recent date of revision to the GWPs in 40 CFR part 98, Subpart A, Table A–1, EPA is proposing to approve the revisions from the 2021 and 2023 SIP Submittals that update the date of incorporation by reference in Regulation 3, Part A, sections I.B.10 and 1.B.44.b.(i).

2. Regulation 3, Part A, Section I.B.44.(b).(i)—Computation of Mass of Carbon Dioxide Equivalent

EPA is proposing to approve an additional revision in Colorado's 2023 SIP Submittal to Regulation 3, Part A, Section I.B.44.b.(i).[76] The revision removes language stating that, prior to July 21, 2014, the mass of carbon dioxide shall not include emissions resulting from the combustion or decomposition of non-fossilized and biodegradable organic material. The removed language is consistent with the definition of ''subject to regulation'' at 40 CFR 70.2, which instructed how to compute the mass of carbon dioxide equivalent before July 21, 2014. This language was meant to defer the application of Prevention of Significant Deterioration and Title V programs to certain sources of biogenic carbon dioxide for three years.[77] Because the deferral period has since expired, continued inclusion of this language in the SIP is unnecessary.

III. Proposed Action

We are proposing to approve elements of Colorado's July 27, 2020, March 22, 2021, and June 26, 2023 SIP Submittals. Specifically, we are proposing to approve Colorado's 2017 base year inventory under CAA sections 172(c)(3) and 182(a)(1). We are proposing to approve Colorado's certification of its APEN reporting program (July 27, 2020 SIP Submittal) and the addition of the annual certification requirement in Section II.A.3 to Regulation 3, Part A (June 26, 2023 SIP Submittal) as meeting the emission statement rule requirements of CAA section 182(a)(3)(B). We are also proposing to approve certain revisions to Regulation 3, Part A, specifically to the date of incorporation by reference of GWPs in Sections 1.B.10 and 1.B.44.b.(i) (March 22, 2021 and June 26, 2023 SIP Submittals) and to the computation of the mass of carbon dioxide equivalent in Section 1.B.44.b.(i) (June 26, 2023 SIP Submittal).

IV. Incorporation by Reference

In this document, the EPA is proposing to include regulatory text in an EPA final rule that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the APCD revisions regarding annual APEN certification, updated incorporation by reference dates of CFR global warming potentials, and revisions related to the computation of carbon dioxide equivalent, as described in sections II.B and II.C of this proposed rule. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 8 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 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 proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this 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

[71] U.S. EPA, ''Draft Guidance on the Implementation of an Emission Statement Program'' (July 1992), 3.

[72] References to specific sections of Regulation 3 in sections II.C.1 and II.C.2 of this proposed rule are to the versions of Regulation 3 the State included in the 2021 and 2023 SIP Submittals, namely: 2021 SIP Submittal, Document Set 4 of 6, ''16_Reg Lang & SBAP Adopted_R3''; 2021 SIP Submittal, Document Set 6 of 6, ''22_5 CCR 1001–5''; 2023 SIP Submittal, Document Set 5 of 7, ''17_Reg Lang & SBAP Adopted_R3''; and 2023 SIP Submittal, Document Set 7 of 7, ''23_5 CCR 1001–5.''

[73] 2021 SIP Submittal, Document Set 4 of 6, ''16_Reg Lang & SBAP Adopted_R3.''

[74] 2021 SIP Submittal, Document Set 6 of 6, ''22_5 CCR 1001–5,'' 4.

[75] 2023 SIP Submittal, Document Set 5 of 7, ''17_Reg Lang & SBAP Adopted_R3.''

[76] Id.

[77] 76 FR 43490, 43490 (July 20, 2011).

under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed 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. 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.'' 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.''

Colorado 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. 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.

List of Subjects in 40 CFR Part 52

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

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

Dated: April 2, 2024.

KC Becker,

Regional Administrator, Region 8.

[FR Doc. 2024–07584 Filed 4–9–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2024–0001; FRL–11838–01–R8]

Extension of the Attainment Date and Determination of Attainment by the Attainment Date of the Uinta Basin Marginal Nonattainment Area Under the 2015 Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is proposing two Clean Air Act (CAA) actions related to the attainment date for the Uinta Basin (Basin), Utah Marginal nonattainment area under the 2015 Ozone National Ambient Air Quality Standards (NAAQS). First, the Agency is proposing to grant a second 1-year extension of the attainment date for the area. This action would extend the Marginal area attainment date for this area from August 3, 2022, to August 3, 2023. Second, the Agency is proposing to determine that the area attained the standard by the extended attainment date of August 3, 2023, based on certified ozone monitoring data from 2020–2022. This action, if finalized, will fulfill the EPA's statutory obligation to determine whether the Uinta Basin Marginal ozone nonattainment area attained the NAAQS by the attainment date through publication in the **Federal Register**.

DATES: Written comments must be received on or before May 10, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2024–0001, to the Federal Rulemaking Portal: *www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *www.regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically in *www.regulations.gov.* To reduce the risk of COVID–19 transmission, for this action we do not plan to offer hard copy review of the docket. Please email or call the person listed in the **FOR FURTHER INFORMATION CONTACT** section if you need to make alternative arrangements for access to the docket.

FOR FURTHER INFORMATION CONTACT: Amanda Brimmer, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD–IO, 1595 Wynkoop Street, Denver, Colorado, 80202–1129, (303) 312–6323, *brimmer.amanda@epa.gov.*

SUPPLEMENTARY INFORMATION: In this document ''we,'' ''us,'' and ''our'' mean the EPA.

Overview and Basis of Proposal

A. Overview of Proposal

Under CAA section 181(b)(2), the EPA is required to determine whether areas designated as nonattainment for an ozone NAAQS attain the standard by the applicable attainment date, and to take certain steps for areas that fail to attain. Because the ozone NAAQS is a concentration-based standard, a determination of attainment is based on a nonattainment area's design value (DV) as of the attainment date.[1] In this proposal the EPA is addressing the 2015 ozone NAAQS.[2]

On March 29, 2021, the State of Utah requested a 1-year extension of the Marginal attainment date for the Uinta Basin. The Ute Indian Tribe (UIT) subsequently requested an extension on May 25, 2021. Based on EPA's evaluation, the criteria for an attainment date extension had been met, and in October 2022, EPA granted the extension, making the new attainment date August 3, 2022.[3] On March 29, 2022, the State of Utah requested a second one-year extension of the Marginal attainment date for the Uinta Basin nonattainment area, which would extend the attainment date to August 3, 2023.[4] On December 20, 2022, the UIT also requested a second one-year extension.

Under the EPA regulations at 40 CFR part 50, appendix U, the 2015 ozone NAAQS is attained at a site when the 3-year average of the annual fourth highest daily maximum 8-hour average ambient air quality ozone concentration (*i.e.,* DV) does not exceed 0.070 ppm. When the DV does not exceed 0.070 ppm at each ambient air quality monitoring site within the area, the area is deemed to be attaining the ozone NAAQS. For this area, which is classified as Marginal nonattainment for the 2015 ozone NAAQS, the attainment date was August 3, 2022, and the proposed extended attainment date would be August 3, 2023. Because the DV is based on the three most recent, complete calendar years of data, attainment must occur no later than December 31 of the year before the attainment date. Therefore, in light of our proposed extension of the attainment date, the proposed determination of attainment is based upon the complete, quality-assured, and certified ozone monitoring data from calendar years 2019 through 2022. Table 1 provides a summary of the DVs and the EPA's proposed air quality-based determinations for the area addressed in this action. While the 2019–2021 DV does not show attainment, the two-year average of 2020–2021 qualifies the region for a second 1-year attainment date extension.[5] Based on the 2020–2022 DV, the region did not exceed 0.070 ppm, and EPA proposes to find that the area attained by the proposed new attainment date.

TABLE 1—UINTA BASIN 2015 OZONE NAAQS MARGINAL NONATTAINMENT AREA EVALUATION SUMMARY[6]

2019–2021 DV (ppm)	2020–2021 average 4th highest daily maximum 8-hr average (ppm)	Area failed to attain 2015 NAAQS but state requested 2nd 1-year attainment date extension based on average 2020–2021 4th highest daily maximum 8-hr average ≤0.070 ppm	2020–2022 DV (ppm)	2015 NAAQS attained by the 2nd 1-year attainment date extension
0.078	0.069	Yes	0.067	Yes.

B. What is the background for the proposed actions?

On October 26, 2015, the EPA issued a final action revising the NAAQS for ozone, establishing new and more stringent primary and secondary 8-hour standards of 0.070 ppm.[7] Effective August 3, 2018, the EPA designated 52 areas throughout the country as nonattainment for the 2015 ozone NAAQS, including the Uinta Basin.[8] In a separate action, the EPA assigned classification thresholds and attainment dates based on the severity of an area's ozone problem, determined by the area's DV.[9] The EPA established the attainment date for Marginal 2015 ozone NAAQS nonattainment areas as 3 years from the effective date of the final designations, meaning that the Uinta Basin Marginal nonattainment area had an attainment date of August 3, 2021.

The area did not attain the 2015 ozone NAAQS by the Marginal area attainment date of August 3, 2021, based on its final 2018–2020 DV of 0.076 ppm. However, the area did meet the criteria under 40 CFR 51.1307(a)(1) for an initial 1-year extension, with an attainment year (2020) fourth highest daily maximum 8-hour average concentration of 0.066 ppm. Certified ozone monitoring data for 2021 showed that the area did not attain the 2015 ozone NAAQS by the extended attainment date of August 3, 2022, based on its final 2019–2021 DV

[1] A design value is a statistic used to compare data collected at an ambient air quality monitoring site to the applicable NAAQS to determine compliance with the standard. The DV for the 2015 ozone NAAQS is the 3-year average of the annual fourth highest daily maximum 8-hour average ozone concentration. The DV is calculated for each air quality monitor in an area, and the DV for an area is the highest DV among the individual monitoring sites located in the area.

[2] Because the 2015 primary and secondary NAAQS for ozone are identical, for convenience, the EPA refers to them in the singular as ''the 2015 ozone NAAQS'' or as ''the standard.''

[3] *See* Final rule, Determinations of Attainment by the Attainment Date (DAAD), Extensions of the Attainment Date, and Reclassification of Areas Classified as Marginal for the 2015 Ozone National Ambient Air Quality Standards, 87 FR 60897 (Oct. 7, 2022).

[4] *See* letter dated March 30, 2022, from Utah Department of Environmental Quality (UDEQ) Executive Director Kim Shelley to U.S. EPA Region 8 Regional Administrator KC Becker; and letter dated December 20, 2022, from Ute Indian Tribe Chairman Shaun Chapoose to U.S. EPA Region 8 Regional Administrator KC Becker.

[5] To qualify for a second 1-year extension, an area's fourth highest daily maximum 8-hour value, averaged over both the original attainment year and the first extension year, must be 0.070 ppm or less (40 CFR 51.1307(a)(2)). As of July 18, 2022, the Uinta Basin area's certified 2020 and 2021 ozone data show that the maximum two-year average design value for 2020–2021 is 0.069 ppm. This is based on 2020 and 2021 ozone values at the two key monitors in the region (AQS Site 490472002 which had fourth highest daily maximum 8-hour value for 2020 at 0.066 ppm, and AQS Site 490472003 which had fourth highest daily maximum 8-hour value for 2021 at 0.072 ppm, which averaged is 0.069 ppm.).

[6] The 1st through 4th highest 8-hour average ozone concentrations at each monitor for each year can be found at EPA's Outdoor Air Quality Data, Monitor Values Report, *https://www.epa.gov/outdoor-air-quality-data/monitor-values-report.* These are AirData reports are produced from a direct query of the Air Quality System (AQS) Data Mart. The data represent the best and most recent information available to EPA from state agencies. However, some values may be absent due to incomplete reporting, and some values may change due to quality assurance activities. The AQS database is updated by state, local, and tribal organizations who own and submit the data.

[7] *See* Final Rule, National Ambient Air Quality Standards for Ozone, 80 FR 65452.

[8] *See* Final Rule, Additional Air Quality Designations for the 2015 Ozone National Ambient Air Quality Standards, 83 FR 25776 (June 4, 2018).

[9] *See* Final Rule, Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area Classifications Approach, 83 FR 10376 (May 8, 2018).

of 0.078 ppm, but it does qualify for a second 1-year extension with a two-year average fourth highest daily maximum 8-hour concentration of 0.069 ppm for the years 2020 and 2021.[10] Additionally, certified data through December 31, 2022, shows that the three-year average for 2020–2022 is 0.067 ppm, which is considered attaining the 2015 ozone NAAQS (see Table 2). Therefore, EPA proposes to determine that the region attained the NAAQS by the proposed attainment date of August 3, 2023.

TABLE 2—OZONE MONITORING VALUES FOR DUCHESNE AND UINTAH COUNTIES, UTAH

AQS Site ID	4th Highest daily max (ppm) [11]						
	2019	2020	2021	Average 2020–2021	Average 2019–2021	2022	Average 2020–2022
Max 4th Max	0.098	[A] 0.066	0.072	[B] 0.069	0.078	0.066	[C] 0.067
Duchesne County:							
490130002	0.087	0.063	0.072		0.074	0.066	0.067
490137011	0.079	0.064	0.069		0.070	0.066	0.066
Uintah County:							
490471002	0.070	0.063	0.068		0.067	0.063	0.064
490471004	0.065	0.063	0.068		0.065	0.063	0.064
490472002	0.074	0.066	0.071		0.070	0.062	0.066
490472003	0.098	0.065	0.072		0.078	0.064	0.067
490477022	0.067	0.065	0.068		0.066	0.062	0.065

[A] Basis for 1st 1-year extension (CAA section 181(a)(5) and 40 CFR 51.1307(a)(1)).
[B] Basis for 2nd 1-year extension (CAA section 181(a)(5) and 40 CFR 51.1307(a)(2)).
[C] Basis for DAAD (181(b)(2)(A) of the CAA and 40 CFR 51.1303).

C. What is the statutory authority for the proposed actions?

The statutory authority for the actions proposed in this document is provided by the CAA, as amended (42 U.S.C. 7401 *et seq.*). CAA section 107(d) provides that when the EPA establishes or revises a NAAQS, the agency must designate areas of the country as nonattainment, attainment, or unclassifiable based on whether an area is not meeting (or is contributing to air quality in a nearby area that is not meeting) the NAAQS, meeting the NAAQS, or cannot be classified as meeting or not meeting the NAAQS, respectively. Subpart 2 of part D of title I of the CAA governs the classification, state planning, and emissions control requirements for any areas designated as nonattainment for a revised primary ozone NAAQS. In particular, CAA section 181(a)(1) requires each area designated as nonattainment for a revised ozone NAAQS to be classified at the same time as the area is designated. Classifications for ozone nonattainment areas are based on the extent of the ozone problem in the area (as determined based on the area's DV) and range from ''Marginal'' to ''Extreme.'' CAA section 182 provides the specific attainment planning and additional requirements that apply to each ozone nonattainment area based on its classification. CAA section 182, as interpreted by the EPA's implementing regulations at 40 CFR 51.1308 through 51.1317, also establishes the timeframes by which air agencies must submit and implement State Implementation Plan (SIP) revisions to satisfy the applicable attainment planning elements, and the timeframes by which nonattainment areas must attain the 2015 ozone NAAQS.

CAA section 181(b)(2)(A) provides that, within 6 months following the applicable attainment date, the EPA must determine whether an ozone nonattainment area attained the ozone standard based on the area's DV as of that date. If an area fails to attain the ozone NAAQS by the applicable attainment date and is not granted a 1-year attainment date extension, CAA section 181(b)(2)(A) requires the EPA to make the determination that an ozone nonattainment area failed to attain the ozone standard by the applicable attainment date, and requires the area to be reclassified by operation of law to the higher of: (1) the next higher classification for the area, or (2) the classification applicable to the area's DV as of the determination of failure to attain. Per CAA section 181(a)(5), upon application by any state, the EPA may grant a 1-year extension of the attainment date for qualifying areas (Section II.A of this notice).

D. How does the EPA determine whether an area is eligible for a second attainment date extension?

Section 181(a)(5) of the CAA gives the EPA the discretion (''the Administrator may'') to extend an area's applicable attainment date by one additional year upon application by any state if the state meets the two criteria under CAA section 181(a)(5). See also 40 CFR 51.1307. This section is intended to provide flexibility where an area is close to achieving attainment and can likely do so with a bit more time. Rather than require an area to attain the NAAQS by a first extended attainment date, the provision expressly allows for a maximum of two 1-year extensions for a single area.

The first criterion is that the State must have complied with all requirements and commitments pertaining to the area in the applicable implementation plan. Second, and specifically related to a second 1-year extension, the area's 4th highest daily maximum 8-hour value, averaged over both the original attainment year and the first extension year, must be no greater than the level of that NAAQS.

The first criterion is satisfied if a state can demonstrate that it is in compliance with its approved implementation plan. *See Delaware Dept. of Nat. Resources and Envtl. Control* v. *EPA,* 895 F.3d 90, 101 (D.C. Cir. 2018) (holding that the CAA requires only that an applying state with jurisdiction over a nonattainment area comply with the requirements in its applicable SIP, not every requirement of the Act). A state may meet this requirement by certifying its compliance, and in the absence of such certification, the EPA may determine whether the criterion has been met. *See Delaware,* 895 F.3d at 101–102.

With respect to the second criterion, for the 2015 ozone NAAQS the EPA has interpreted the air quality criterion of

[10] *See* footnote 5.

[11] See footnote 5.

CAA section 181(a)(5)(B) to mean that an area's 4th highest daily maximum 8-hour value, averaged over both the original attainment year and the first extension year, must be no greater than 0.070 ppm. Utah certified that both criteria have been met in their second extension request.[12]

E. How does the EPA determine whether an area has attained the 2015 ozone standard?

The 2015 ozone NAAQS is attained for an area when the 3-year average of the annual fourth highest daily maximum 8-hour average ambient air quality ozone concentration (*i.e.,* DV) at each monitoring site in the area does not exceed 0.070 ppm. See 40 CFR part 50, appendix U.

The EPA's determination of attainment is based upon data that have been collected and quality-assured in accordance with 40 CFR part 58 and recorded in the EPA's Air Quality System (AQS) database.[13] Ambient air quality monitoring data for the 3-year period preceding the year of the attainment date (2020–2022 for the Uinta Basin 2015 ozone NAAQS Marginal area, after the granting of the second 1-year extension) must meet the data completeness requirements in Appendix U, section 4(b). These completeness requirements are met for the 3-year period at a monitoring site if daily maximum 8-hour average concentrations of ozone are available for at least 90 percent of the days within the ozone monitoring season, on average, for the 3-year period, and no single year has less than 75 percent data completeness. Monitors in the NWF nonattainment area have met this requirement.

II. What is the EPA proposing and what is the rationale?

The EPA evaluated air quality monitoring data submitted by the appropriate state and tribal air agencies to determine the attainment status. The area failed to attain the 2015 ozone NAAQS by the extended attainment date of August 3, 2022, but is eligible for a second 1-year attainment date extension under CAA section 181(a)(5) and 40 CFR 51.1307. We are now proposing to grant a requested second 1-year attainment date extension and to determine, in accordance with CAA section 181(b)(2)(A) and 40 CFR 51.1303, that the area attained the 2015 ozone NAAQS by the proposed extended Marginal area attainment date of August 3, 2023, based on the area's 2020–2022 DV (Table 1). This section describes the determinations and actions being proposed in this document.

A. Extension of Marginal Area Attainment Date

In a letter dated March 29, 2022, the Utah Division of Air Quality (UDAQ) requested an extension of the Uinta Basin area Marginal area attainment date. In addition, the UIT requested an extension in a letter dated December 20, 2022. The information presented by the state in their request demonstrates that the area meets the two necessary statutory criteria for the second 1-year extension under CAA section 181(a)(5). Further, we have found no compelling countervailing facts or circumstances that would cause the agency to exercise its discretion to deny the request notwithstanding the state's demonstration. UDAQ has certified that they have complied with all requirements and commitments pertaining to this area in their approved implementation plan and monitoring data completeness. On February 1, 2022, EPA approved that the Emission Statement Rule and the Nonattainment New Source Review Requirements had been met through SIP submittals and that Utah had met all the requirements for its Marginal NAAs under the 2015 8-hour ozone NAAQS.[14] The 2017 Base Year Inventory Marginal NAA requirement was met through EPA approval on July 6, 2021.[15] For these reasons, the EPA proposes to grant the requested 1-year extension of the August 3, 2022, Marginal area attainment date for the Uinta Basin area.

If this proposal is finalized, on the effective date of the final action, the attainment date for the Uinta Basin area will be extended from August 3, 2022, to August 3, 2023. The EPA solicits comments on this proposal to grant the requested second 1-year attainment date extension for the Uinta Basin Marginal ozone nonattainment area, and whether there are any particular circumstances, such as disproportionate environmental exposure or burdens, that the EPA should consider before granting the request.

B. Determination of Attainment by the Attainment Date

Along with proposing to grant a second 1-year attainment date extension, in this rulemaking we are proposing to determine that, in accordance with CAA section 181(b)(2), the Uinta Basin Marginal ozone nonattainment area attained the 2015 ozone NAAQS by the extended Marginal area attainment date of August 3, 2023, based on the 2020–2022 DV (see Table 1). See also 40 CFR 51.1303. The EPA requests comment on the proposed determination of attainment by the proposed attainment date.

This proposed determination of attainment by the attainment date does not constitute formal redesignation to attainment as provided for under CAA section 107(d)(3).

C. Additional Information

As part of this rulemaking, EPA acknowledges that preliminary ozone monitoring data indicate that in early 2023, the region experienced excessively high ozone values. While this data was not determinative in proposing to grant the 2nd extended attainment date, it does show that there continue to be periods of high ozone levels in the Basin. Addressing the continuing ozone problem will require continued efforts and steady commitments from state, local, federal, tribal, and industry partners to reduce precursor emissions in the region. The following sections (see i through iv below) provide additional information on reductions EPA expects will significantly mitigate exceedances in the area.

i. Air Quality Trends

The Uinta Basin nonattainment area has a unique ozone problem, in that it primarily occurs during the wintertime, instead of during the summertime as is seen in most other ozone nonattainment areas. Accordingly, in the Uinta Basin violating ozone concentrations are

[12] *See* letter dated March 30, 2022, from Utah Department of Environmental Quality (UDEQ) Executive Director Kim Shelley to U.S. EPA Region 8 Regional Administrator KC Becker.

[13] The EPA maintains the AQS, a database that contains ambient air pollution data collected by the EPA, state, local, and tribal air pollution control agencies. The AQS also contains meteorological data, descriptive information about each monitoring station (including its geographic location and its operator) and data quality assurance/quality control information. The AQS data is used to (1) assess air quality, (2) assist in attainment/non-attainment designations, (3) evaluate SIPs for non-attainment areas, (4) perform modeling for permit review analysis, and (5) prepare reports for Congress as mandated by the CAA. See *https://www.epa.gov/aqs.*

[14] *See* Final rule, Approval and Promulgation of Implementation Plans; Utah; Emissions Statement Rule and Nonattainment New Source Review Requirements for the 2015 8-Hour Ozone National Ambient Air Quality Standard for the Uinta Basin, Northern Wasatch Front and Southern Wasatch Front Nonattainment Areas, 87 FR 24273 (April 25, 2022).

[15] *See* Final rule, Approval and Promulgation of Implementation Plans; Utah; 2017 Base Year Inventories for the 2015 8-Hour Ozone National Ambient Air Quality Standard for the Uinta Basin, Northern Wasatch Front and Southern Wasatch Front Nonattainment Areas, 86 FR 35404 (July 6, 2021).

driven by stagnant winter conditions associated with snow cover and strong temperature inversions, which directly result in increased ozone production due to accumulated local ozone precursor emissions from oil and gas sources in the Basin.

The CAA mandates that the EPA determine whether an area attained the NAAQS solely on the basis of the area's DV as of the attainment date, CAA section 181(b)(2)(A), and does not permit the EPA to consider in making that determination how the area attained or whether the area will continue to attain in making that determination. Therefore, we did not consider other factors, such as documented reductions in emissions of ozone precursors and demonstrations that enforceable controls achieved attainment, in determining whether the area attained by the proposed attainment date.

ii. U&O Federal Implementation Plan (FIP) for Managing Emissions From Oil and Gas Sources on Indian Country

In developing this proposal, we also considered the impact of the recently finalized FIP for Managing Emissions from Oil and Natural Gas Sources on Indian Country Lands within the Uintah and Ouray Indian Reservation in Utah (U&O FIP).[16] The U&O FIP requires new, modified, and existing oil and natural gas sources on Indian country lands within the U&O Reservation to implement new control requirements. While the FIP was not specifically designed to bring the area into attainment of the 2015 ozone NAAQS, the EPA expects these emission limits to significantly reduce ozone precursor emissions and improve air quality in the area. Most volatile organic compounds (VOC) emissions within the Basin are from existing oil and gas activity, and most of those oil and gas emissions are from existing sources on the U&O Indian Reservation and in the nonattainment area. Before the promulgation of the U&O FIP, VOC emissions control requirements for existing oil and gas sources were in place in areas of the Uinta Basin under the State of Utah's jurisdiction, but not in the Indian country areas of the U&O Indian Reservation, leaving sources in a large portion of the U&O Basin largely uncontrolled. With the ongoing implementation of the U&O FIP, we expect the new control requirements to make a meaningful improvement in air quality and assist in addressing winter ozone exceedances on the Reservation, and in the nonattainment area and larger Uinta Basin region.

iii. Voluntary Measures

In a letter dated May 30, 2023, the UIT provided supplemental information to EPA on voluntary efforts to reduce oil and gas emissions from sources on the U&O Reservation.[17] The letter highlighted efforts by operators in the Basin to identify and mitigate emissions leaks from operations. Efforts included voluntary leak detection and repair (LDAR) inspections, controlling tank vapor, replacement and retrofitting of pneumatic pumps, aerial methane surveying, converting compressors from natural gas to line-electric or solar-electric power, using non-emitting pneumatic devices at new well pads, and redesigning compressor stations to reduce emissions.

Another initiative taking place in this nonattainment area is the Winter Ozone Alert Program, run by Utah State University Bingham Research Center. Initiated in 2017, the program provides email alerts when ozone exceeding EPA standards is forecasted for the Uinta Basin. The purpose of these alerts is to provide the oil and gas industry and others with real-time information about air quality in the Basin so they can take voluntary action to reduce emissions of ozone-forming pollutants.[18]

iv. Final Rule on Oil and Gas New Standards and Emissions Guidelines (OOOOb/c)

On March 8, 2024, the EPA finalized new source performance standards and emission guidelines for the crude oil and natural gas source category under CAA section 111, which codifies new subparts OOOOb and OOOOc at 40 CFR part 60.[19] These rules are expected to achieve significant emissions reductions from both new, reconstructed, and modified sources in addition to existing oil and gas operations in the Basin as well as across the nation.

Under subpart OOOOb, EPA established federal standards for new, modified, and reconstructed sources. Subpart OOOOb requires enhanced LDAR at new, modified, and reconstructed well sites, including wellhead-only sites, and add options that allow owners to use a wider selection of methane detection technologies to check for leaks. Subpart OOOOc includes presumptive standards to limit GHGs emissions (in the form of methane limitations) from designated facilities in the Crude Oil and Natural Gas source category, as well as requirements under the CAA section 111(d) for states to follow in developing, submitting, and implementing state plans to establish performance standards. Subpart OOOOc defers to the General Provision's Implementing Regulations under 40 CFR part 60 subpart Ba [20] for certain requirements, such as the requirement for states to conduct meaningful public engagement during development of their existing source plans.[21] EPA is committed to issuing a Federal Plan in a timely manner to implement OOOOc in Indian country and will continue to engage with Tribal Nations and state partners throughout this process.

III. Environmental Justice Considerations

The CAA gives the EPA the discretion to extend an area's applicable attainment date by one additional year upon application by any state if the state meets the two criteria under CAA section 181(a)(5) (see Section I.D of this notice). As part of the screening analyses to evaluate whether communities in the Uinta Basin area may be exposed to disproportionate pollution burdens as a result of this proposed extension, we used EJSCREEN, an EJ mapping and screening tool that provides EPA with a nationally consistent dataset and approach for combining various

[16] Federal Implementation Plan for Managing Emissions From Oil and Natural Gas Sources on Indian Country Lands Within the Uintah and Ouray Indian Reservation in Utah, Final Rule, see 87 FR 75334 (Dec. 8, 2022); see also Federal Implementation Plan for Managing Emissions From Oil and Natural Gas Sources on Indian Country Lands Within the Uintah and Ouray Indian Reservation in Utah, Proposed Rule, 85 FR 3492 (Jan. 21, 2020); at 87 FR 21842, 21848 (April 13, 2022) (discussing U&O FIP proposal).

[17] *See* letter dated May 30, 2023, from Ute Indian Tribe Business Committee Chairman, Julius T. Murray, III to U.S. EPA Region 8 Enforcement and Compliance Director, Suzanne Bohan.

[18] Information on this program can be found at *https://www.usu.edu/binghamresearch/ozone-alert.*

[19] *See* Final rule, Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review, 89 FR 16820 (Mar. 8, 2024).

[20] *See* 88 FR 80480 (November 17, 2023).

[21] Subpart Ba requires as part of completeness criteria in 40 CFR 60.27a(g) that states must submit, with the plan or revision, documentation of meaningful engagement including a list of identified pertinent stakeholders and/or their representatives, a summary of the engagement conducted, a summary of stakeholder input received, and a description of how stakeholder input was considered in the development of the plan or plan revisions. *See* 40 CFR 60.21a for the definitions of meaningful engagement and pertinent stakeholders. State plans submitted in accordance with OOOOc that include provisions for Remaining Useful Life and Other Factors (RULOF) must comply with the subpart Ba general RULOF provisions in 40 CFR 60.24a (*see* 40 CFR 60.20a(a), which establishes applicability of subpart Ba requirements to EG OOOOc). Further, EG OOOOc does not supersede any requirement within subpart Ba related to RULOF.

environmental and demographic indicators.[22] The EJSCREEN tool presents these indicators at a Census block group (CBG) level or a larger user-specified ''buffer'' area that covers multiple CBGs.[23] An individual CBG is a cluster of contiguous blocks within the same census tract and generally contains between 600 and 3,000 people. EJSCREEN is not a tool for performing in-depth risk analysis but is instead a screening tool that provides an initial representation of indicators related to EJ. We also examined ozone design value data for the Uinta Basin area.[24]

With respect to the Uinta Basin, the EPA conducted an EJSCREEN analysis for the two counties (Duchesne and Uintah) that encompass the entire Uinta Basin nonattainment area. The results of our screening analysis did not indicate disproportionate exposure or burdens with respect to the non-ozone environmental indicators assessed in EJSCREEN for the 2-county (Duchesne and Uintah) area, or relative to the U.S. as a whole.[25]

The EPA's inquiry is consistent with multiple executive orders addressing environmental justice as well as an April 7, 2021, directive by the EPA Administrator.[26] In that directive, the Administrator instructed all EPA offices to take immediate and affirmative steps to incorporate EJ considerations into their work, including assessing impacts to pollution-burdened, underserved, and Tribal communities in regulatory development processes and considering regulatory options to maximize benefits to these communities.[27]

The EPA considered the information described above in evaluating the request for a second 1-year extension of the Marginal attainment date, and we propose to find that this information does not weigh against our proposal to grant the request.

IV. Tribal Consultation

In accordance with the EPA Policy on Consultation and Coordination with Indian Tribes, the EPA is offering an opportunity to the UIT for consultation during the public comment period on this proposed EPA action (see Section V.F of this notice).[28]

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 14094: Modernizing Regulatory Review

This action is exempt from review under Executive Order 12866, as amended by Executive Order 14094, because it responds to the CAA requirement to determine whether areas designated nonattainment for an ozone NAAQS attained the standard by the applicable attainment date.

B. Paperwork Reduction Act (PRA)

This proposed rule does not impose any new information collection burden under the PRA not already approved by the Office of Management and Budget. This action proposes to: (1) Find that this Marginal ozone nonattainment area failed to attain the 2015 NAAQS by the attainment date of Aug. 3, 2022; (2) Determine that this area qualifies for a second 1-year extension of the attainment date; (3) Grant the request by the State and Tribe to extend the attainment date to Aug. 3, 2023; and (4) Determine that thist area attained the standard by the new attainment date. Thus, the proposed action does not establish any new information collection burden that has not already been identified and approved in the EPA's information collection request.[29]

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. The proposed determination to grant a 1-year attainment date extension and the proposed determinations of attainment by the proposed attainment date for the 2015 ozone NAAQS do not in and of themselves create any new requirements beyond what is mandated by the CAA. Instead, this rulemaking only makes factual determinations, and does not directly regulate any entities.

D. Unfunded Mandates Reform Act (UMRA)

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

E. Executive Order 13132: Federalism

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

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

This action has tribal implications, because it proposes actions that will affect the ozone classification of a large area of Indian country within the U&O Reservation. However, it will neither

[22] The EJ SCREEN tool is available at *www.epa.gov/ejscreen.*

[23] See *www.census.gov/programs-surveys/geography/about/glossary.html.*

[24] The ozone metric in EJSCREEN represents the summer seasonal average of daily maximum 8-hour concentrations (parts per billion), and was not used in our EJ analyses because this metric is not informative of peak ozone concentrations for this area, which are instead represented here by the design value metric. Ozone design values are the basis of attainment determinations in this proposed action, and we consider it a more informative indicator of pollution burden from ozone in the Uinta Basin area.

[25] EJSCREEN examines multiple environmental indicators, including particulate matter, traffic proximity and volume, lead paint in housing, and proximity scores for Superfund, RMP and hazardous waste facilities. The results of our EJSCREEN analyses are in this docket (EPA–HQ–OAR–2024–0001).

[26] See Message from the EPA Administrator, Our Commitment to Environmental Justice (April 7, 2021) at *www.epa.gov/sites/production/files/2021–04/documents/regan-messageoncommitmenttoenvironmentaljustice-april072021.pdf;* E.O. 13985, Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (January 20, 2021), available at *www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/* and 86 FR 7009 (January 25, 2021)); E.O. 12898, Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations (February 11, 1994), available at *www.epa.gov/sites/production/files/2015-02/documents/exec_order_12898.pdf* and 59 FR 7629 (February 16, 1994)); E.O. 14096, Revitalizing Our Nation's Commitment to Environmental Justice for All, issued April 21, 2023, available at *www.govinfo.gov/content/pkg/FR-2023-04-26/pdf/2023-08955.pdf* and 88 FR 25251 (April 26, 2023).

[27] The EPA has defined environmental justice 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.'' *See www.epa.gov/environmentaljustice/learn-about-environmentaljustice.*

[28] *See* EPA Policy on Consultation and Coordination with Indian Tribes, May 4, 2011, *www.epa.gov/sites/default/files/2013-08/documents/cons-and-coord-with-indian-tribes-policy.pdf.*

[29] On April 30, 2018, the OMB approved EPA's request for renewal of the previously approved information collection request (ICR). The renewed request expired on April 30, 2021, 3 years after the approval date (see OMB Control Number 2060–0695 and ICR Reference Number 201801–2060–003 for EPA ICR No. 2347.03). On April 30, 2021, the OMB published the final 30-day Notice (86 FR 22959) for the ICR renewal titled ''Implementation of the 8-Hour National Ambient Air Quality Standards for Ozone (Renewal)'' (see OMB Control Number 2060–0695 and ICR Reference No: 202104–2060–004 for EPA ICR Number 2347.04). The ICR renewal is pending OMB final approval.

impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law.

The EPA consulted with tribal officials under the EPA Policy on Consultation and Coordination with Indian Tribes early in the process of developing this regulation to permit them to have meaningful and timely input into its development. A summary of that consultation to date is provided in the docket. See ''Consultation with the UIT.docx.'' EPA intends to offer further consultation to the UIT upon signature of this proposal.

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

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

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

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations and E.O. 14096: Revitalizing Our Nation's Commitment to Environmental Justice for All

The EPA believes that the human health and environmental conditions existing prior to this action do not result in disproportionate and adverse effects on communities with EJ concerns. The EPA believes that this action is not likely to result in new disproportionate and adverse effects on communities with environmental justice concerns. Documentation for this determination is presented in Section II.A of this action, ''Extension of Marginal Area Attainment Date.'' Supporting information is described in Section III of this action, ''Environmental Justice Considerations'' and the relevant documents have been placed in the public docket for this action.

With respect to the determinations of whether areas have attained the NAAQS by the attainment date, the EPA has no discretionary authority to address EJ in these determinations. CAA section 181(b)(2)(A) directs that within 6 months following the applicable attainment date, the Administrator shall determine, based on the area's design value as of the attainment date, whether the area attained the standard by that date. Except for any Severe or Extreme area, any area that the Administrator finds has not attained the standard by that date shall be reclassified by operation of law to either the next higher classification or the classification applicable to the area's design value. *Id.*

List of Subjects

40 CFR Part 52

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

40 CFR Part 81

Environmental protection, Administrative practice and procedure, Air pollution control, Designations and classifications, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 3, 2024.

KC Becker,

Regional Administrator, Region 8.

[FR Doc. 2024–07501 Filed 4–9–24; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 89, No. 70
Wednesday, April 10, 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

U.S. Codex Office

Codex Alimentarius Commission: Meeting of the Codex Committee on Pesticide Residues

AGENCY: U.S. Codex Office, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The U.S. Codex Office is sponsoring a public meeting on May 7, 2024. The objective of the public meeting is to provide information and receive public comments on agenda items and draft U.S. positions to be discussed at the 55th Session of the Codex Committee on Pesticide Residues (CCPR) of the Codex Alimentarius Commission (CAC), which will convene in Chengdu, China from June 3–8, 2024. The U.S. Manager for Codex Alimentarius and the Under Secretary for Trade and Foreign Agricultural Affairs recognize the importance of providing interested parties the opportunity to obtain background information on the 55th Session of the CCPR and to address items on the agenda.

DATES: The public meeting is scheduled for May 7, 2024, from 2–4 p.m. EDT.

ADDRESSES: The public meeting will take place via Video Teleconference only. Documents related to the 55th Session of the CCPR will be accessible via the internet at the following address: *https://www.fao.org/fao-who-codexalimentarius/meetings/detail/en/?meeting=CCPR&session=55.*

Mr. Aaron Niman, U.S. Delegate to the 55th Session of the CCPR, invites U.S. interested parties to submit their comments electronically to the following email address: *niman.aaron@epa.gov.*

Registration: Attendees must register to attend the public meeting here: *https://www.zoomgov.com/meeting/register/vJIsdeusqToqGJsaAJowgX6yU5XYeo86GQI.*

After registering, you will receive a confirmation email containing information about joining the meeting. For further information about the 55th Session of the CCPR, contact U.S. Delegate, Mr. Aaron Niman, *niman.aaron@epa.gov*, (202) 566–2177. For additional information about the public meeting, contact the U.S. Codex Office by email at *uscodex@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Codex Alimentarius Commission was established in 1963 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure fair practices in the food trade.

The Terms of Reference of the Codex Committee on Pesticide Residues (CCPR) are:

(a) to establish maximum limits for pesticide residues in specific food items or in groups of food;

(b) to establish maximum limits for pesticide residues in certain animal feeding stuffs moving in international trade where this is justified for reasons of protection of human health;

(c) to prepare priority lists of pesticides for evaluation by the Joint FAO/WHO Meeting on Pesticide Residues (JMPR);

(d) to consider methods of sampling and analysis for the determination of pesticide residues in food and feed;

(e) to consider other matters in relation to the safety of food and feed containing pesticide residues; and,

(f) to establish maximum limits for environmental and industrial contaminants showing chemical or other similarity to pesticides, in specific food items or groups of food.

The CCPR is hosted by China. The United States attends the CCPR as a member country of Codex.

Issues To Be Discussed at the Public Meeting

The following items from the forthcoming Agenda for the 55th Session of the CCPR will be discussed during the public meeting:

- Adoption of the Agenda
- Appointment of Rapporteurs
- Matters referred to CCPR by CAC and/or other subsidiary bodies
- Matters of interest arising from FAO and WHO
- Matters of interest arising from other international organizations
- Report on items of general consideration arising from the 2023 JMPR regular meeting
- Report on responses to specific concerns raised by CCPR arising from the 2023 JMPR regular meeting
- Maximum Residue Limits (MRLs) for pesticides in food and feed
- Guidelines for monitoring the purity and stability of reference materials and related stock solutions of pesticides during prolonged storage
- Management of unsupported compounds without public health concern scheduled for periodic review
- National registrations of pesticides
- Establishment of Codex Schedules and Priority Lists of Pesticides for Evaluation/Re-Evaluation by JMPR
- Enhancement of the Operational Procedures of CCPR and JMPR
- Coordination of work between CCPR and the Codex Committee on Residues of Veterinary Drugs in Foods (CCRVDF): Joint CCPR/CCRVDF Working Group on Compounds for Dual Use—Status of work
- Analysis of previous decisions by CCPR to establish MRLs for tomato and pepper to establish corresponding MRLs in eggplant
- Other Business

Public Meeting

At the May 7, 2024, public meeting, draft U.S. positions on the agenda items will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to Mr. Aaron Niman, U.S. Delegate to the 55th Session of the CCPR, at *niman.aaron@epa.gov.* Written comments should state that they relate to activities of the 55th Session of the CCPR.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, the U.S.

Codex Office will announce this **Federal Register** publication on-line through the USDA web page located at: *https://www.usda.gov/codex,* a link that also offers an email subscription service providing access to information related to Codex. Customers can add or delete their subscription themselves and have the option to password protect their accounts.

USDA Non-Discrimination Statement

No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, or political beliefs, exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States under any program or activity conducted by the USDA.

How To File a Complaint of Discrimination

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at *https://www.usda.gov/oascr/filing-program-discrimination-complaint-usda-customer,* or write a letter signed by you or your authorized representative. Send your completed complaint form or letter to USDA by mail, fax, or email. Mail: U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW, Washington, DC 20250–9410; Fax: (202) 690–7442; Email: *program.intake@usda.gov.* Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Done at Washington, DC, on April 5, 2024.

Mary Frances Lowe,

U.S. Manager for Codex Alimentarius.

[FR Doc. 2024–07591 Filed 4–9–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Forest Service

Proposed New Recreation Fee Sites

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice.

SUMMARY: The Humboldt-Toiyabe National Forest is proposing to establish several new recreation fee sites. Proposed new recreation fees collected at the proposed new recreation fee sites would be used for operation, maintenance, and improvement of the sites. An analysis of nearby recreation fee sites with similar amenities shows the proposed new recreation fees that would be charged at the proposed new recreation fee sites are reasonable and typical of similar recreation fee sites in the area.

DATES: If approved, the proposed new recreation fee sites and proposed new recreation fees would be established no earlier than six months following the date of publication of this notice in the **Federal Register**.

ADDRESSES: Humboldt-Toiyabe National Forest, 1200 Franklin Way, Sparks, Nevada 89431.

FOR FURTHER INFORMATION CONTACT: Randy Kyes, Recreation Program Manager, (775) 331–6444 or *randy.kyes@usda.gov.*

SUPPLEMENTARY INFORMATION: The Federal Lands Recreation Enhancement Act (16 U.S.C. 6803(b)) requires the Forest Service to publish a six-month advance notice in the **Federal Register** of establishment of proposed new recreation fee sites. In accordance with Forest Service Handbook 2309.13, chapter 30, the Forest Service will publish the proposed new recreation fee sites and proposed new recreation fees in local newspapers and other local publications for public comment. Most of the proposed new recreation fees collected at the proposed new recreation fee sites would be spent where they are collected to enhance the visitor experience at the sites.

A proposed expanded amenity recreation fee of $10 per night would be charged for Barley Creek Trailhead, Big Creek, Columbine, Jack Creek, Kingston, Peavine Creek, Pine Creek, Pine Creek (Tonopah Ranger District), San Juan Community Use Area, Sawmill, Slide Creek, and Toquima Cave Campgrounds. A proposed expanded amenity recreation fee of $250 per hour for groups of up to 250 people would be charged for Spring Mountains Visitor Gateway Amphitheater, and a proposed expanded amenity recreation fee of $50 per hour for groups of up to 36 people would be charged for the Spring Mountains Visitor Gateway Education Center.

Expenditures of the proposed new recreation fees collected at the proposed new recreation fee sites would enhance recreation opportunities, improve customer service, and address maintenance needs. Once the public involvement process is complete, the proposed new recreation fee sites and proposed new recreation fees will be reviewed by a Recreation Resource Advisory Committee prior to a final decision and implementation. Reservations for campgrounds and cabins could be made online at *www.recreation.gov* or by calling 877–444–6777. Reservations would cost $8.00 per reservation.

Dated: March 29, 2024.

Jacqueline Emanuel,

Associate Deputy Chief, National Forest System.

[FR Doc. 2024–07531 Filed 4–9–24; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

[Docket Number: 240404–0095]

Bureau of Economic Analysis Advisory Committee Meeting

AGENCY: Bureau of Economic Analysis, U.S. Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, the Bureau of Economic Analysis (BEA) announces a meeting of the Bureau of Economic Analysis Advisory Committee (BEAAC or the Committee). The meeting will address proposed improvements, extensions, and research related to BEA's economic accounts. In addition, the meeting will include an update on recent statistical developments.

DATES: May 10, 2024. The meeting begins at 9:30 a.m. and adjourns at 3 p.m. (ET)

ADDRESSES: This meeting will be a hybrid event. Committee members and presenters will have the option to join the meeting in person or via video conference technology. All outside attendees will be invited to attend via video conference technology only. The meeting is open to the public via video conference technology. Contact Gianna Marrone at (301) 278–9282 or *gianna.marrone@bea.gov* by May 3, 2024, to RSVP. The call-in number, access code, and presentation link will be posted 24 hours prior to the meeting on *https://www.bea.gov/about/bea-advisory-committee.*

FOR FURTHER INFORMATION CONTACT: Gianna Marrone, Program Analyst, U.S. Department of Commerce, Bureau of Economic Analysis, Suitland, MD, 20746; phone (301) 278–9282; email *gianna.marrone@bea.gov.*

SUPPLEMENTARY INFORMATION: The Committee was established July 22, 1999, in accordance with the Federal Advisory Committee Act (5 U.S.C. 1001

et seq.). The Committee advises the Director of BEA on matters related to the development and improvement of BEA's national, regional, industry, and international economic accounts, especially in areas of new and rapidly growing economic activities arising from innovative and advancing technologies. The Committee provides recommendations from the perspective of businesspeople, academicians, researchers, and experts in government and international affairs.

The Committee aims to have a balanced representation among its members, considering such factors as geography, technical expertise, community involvement, and knowledge of programs and/or activities related to BEAAC. Individual members are selected based on their expertise in specific areas as needed by BEAAC.

This meeting is open to the public. The meeting is accessible to people with disabilities. Requests for foreign language interpretation or other auxiliary aids or extensive questions or statements must be submitted in writing to Gianna Marrone at (301) 278–9282 or *gianna.marrone@bea.gov* by May 3, 2024.

Authority: Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. 1001 *et seq.*

Dated: April 4, 2024.

Ryan Noonan,

Designated Federal Officer, Bureau of Economic Analysis.

[FR Doc. 2024–07542 Filed 4–9–24; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

[Docket Number: 240404–0096]

Federal Economic Statistics Advisory Committee Meeting

AGENCY: Bureau of Economic Analysis, U.S. Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Bureau of Economic Analysis (BEA) is giving notice of a meeting of the Federal Economic Statistics Advisory Committee (FESAC or the Committee). The Committee advises the Directors of the Bureau of Economic Analysis and the Census Bureau, and the Commissioner of the U.S. Department of Labor's Bureau of Labor Statistics (BLS) on statistical methodology and other technical matters related to the collection, tabulation, and analysis of federal economic statistics. An agenda will be accessible prior to the meeting at *https://apps.bea.gov/fesac/.*

DATES: June 14, 2024. The meeting begins at 10 a.m. and adjourns at 3:30 p.m. (ET).

ADDRESSES: This meeting will be a hybrid event. Committee members and presenters will have the option to join the meeting in person or via video conference technology. All outside attendees will be invited to attend via video conference technology only. The meeting is open to the public via video conference technology. Contact Gianna Marrone at (301) 278–9282 or *gianna.marrone@bea.gov* by June 7, 2024, to RSVP. The FESAC website will maintain the most current information on the meeting agenda, schedule, and location. These items may be updated without further notice in the **Federal Register**. Information about how to access the meeting and presentations will be posted 24 hours prior to the meeting on *https://apps.bea.gov/fesac/.*

FOR FURTHER INFORMATION CONTACT: Gianna Marrone, Program Analyst, U.S. Department of Commerce, Bureau of Economic Analysis, 4600 Silver Hill Road (BE–64), Suitland, MD 20746; phone (301) 278–9282; email *gianna.marrone@bea.gov.*

SUPPLEMENTARY INFORMATION: FESAC members are appointed by the Secretary of Commerce. The Committee advises the BEA and Census Bureau Directors and the Commissioner of the Department of Labor's BLS on statistical methodology and other technical matters related to the collection, tabulation, and analysis of federal economic statistics. The Committee is established in accordance with the Federal Advisory Committee Act (5 U.S.C. 1001 *et seq.*).

The Committee aims to have a balanced representation among its members, considering such factors as geography, technical expertise, community involvement, and knowledge of programs and/or activities related to FESAC. Individual members are selected based on their expertise or experience in specific areas as needed by FESAC.

This meeting is open to the public. The meeting is accessible to people with disabilities. Requests for foreign language interpretation, other auxiliary aids, or persons with extensive questions or statements must submit to Gianna Marrone at *gianna.marrone@bea.gov* by June 7, 2024.

Authority: Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. 1001 *et seq.*

Dated: April 4, 2024.

Sabrina Montes,

Designated Federal Officer, Bureau of Economic Analysis.

[FR Doc. 2024–07540 Filed 4–9–24; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–64–2024]

Foreign-Trade Zone 40; Application for Expansion of Subzone 40I; Swagelok Company; Cleveland, Ohio

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Cleveland Cuyahoga County Port Authority, grantee of FTZ 40, requesting an expansion of Subzone 40I on behalf of Swagelok Company. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on April 5, 2024.

The applicant is requesting authority to expand the subzone to include a new site located at 1400 Worden Road, in Wickliffe (Site 13—2.227 acres). No authorization for additional production activity has been requested at this time. The expanded subzone would be subject to the existing activation limit of FTZ 40.

In accordance with the FTZ Board's regulations, Juanita Chen of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is May 20, 2024. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to June 4, 2024.

A copy of the application will be available for public inspection in the ''Online FTZ Information Section'' section of the FTZ Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Juanita Chen at *juanita.chen@trade.gov.*

Dated: April 5, 2024.

Elizabeth Whiteman,

Executive Secretary.

[FR Doc. 2024–07607 Filed 4–9–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Annual Report From Foreign-Trade Zones

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce (Department), in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before June 10, 2024.

ADDRESSES: Interested persons are invited to submit written comments by email to the U.S. Foreign-Trade Zones (FTZ) Office at *FTZ@trade.gov* or *PRA@trade.gov.* Please reference OMB Control Number 0625–0109 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Juanita Chen, Senior FTZ Analyst, telephone: (202) 482–1378, U.S. FTZ Office, 1401 Constitution Ave. NW, Washington, DC 20230, email: *juanita.chen@trade.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The FTZ Annual Report is the vehicle by which FTZ grantees report annually to the FTZ Board, pursuant to the requirements of the FTZ Act (19 U.S.C. 81(p)). The annual reports submitted by grantees are the only complete source of compiled information on FTZs. The data and information contained in the reports relate to international trade activity in the FTZs. The reports are used by the Congress and the Department to determine the economic effect of the FTZ program. The reports are also used by the FTZ Board and other trade policy officials to determine whether zone activity is consistent with U.S. international trade policy, and whether it is in the public interest. The public uses the information regarding activities carried out in the FTZs to evaluate their effect on industry sectors. The information contained in annual reports also helps zone grantees in their marketing efforts. This is a request for a renewal of a currently approved information collection.

II. Method of Collection

The FTZ Annual Report is collected from zone grantees in a web-based, electronic format.

III. Data

OMB Control Number: 0625–0109.
Form Number(s): ITA 359P.
Type of Review: Regular submission, extension of a current information collection.
Affected Public: State, local, tribal governments, or not-for-profit institutions that have been granted FTZ authority.
Estimated Number of Respondents: 261.
Estimated Time per Response: 1 to 76 hours (depending on size and structure of the FTZ).
Estimated Total Annual Burden Hours: 5,979.
Estimated Total Annual Cost to Public: 0.
Respondent's Obligation: Mandatory.
Legal Authority: 19 U.S.C. 81(p).

IV. Request for Comments

We are soliciting public comments to permit the Department/International Trade Administration to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) 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; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2024–07609 Filed 4–9–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Regulations and Procedures Technical Advisory Committee; Notice of Partially Closed Meeting

The Regulations and Procedures Technical Advisory Committee (RPTAC) will meet April 30, 2024, 9:00 a.m., Eastern Daylight Time, in the Herbert C. Hoover Building, Room 3884, 1401 Constitution Avenue NW, Washington, DC (enter through Main Entrance on 14th Street between Constitution and Pennsylvania Avenues). The Committee advises the Office of the Assistant Secretary for Export Administration on implementation of the Export Administration Regulations (EAR) and provides for continuing review to update the EAR as needed. The purpose of the meeting is to have Committee members and U.S. Government representatives mutually review updated technical data and policy-driving information that has been gathered.

Agenda

Public Session

1. Opening remarks by the Chairman
2. Opening remarks by the Bureau of Industry and Security
3. Presentations of Papers by the Public
4. Regulations Update
5. Automated Export System Update
6. Working Group Reports

Closed Session

7. Discussion of matters determined to be exempt from the open meeting and public participation requirements found in Sections 1009(a)(1) and 1009(a)(3) of the Federal Advisory Committee Act (FACA) (5 U.S.C. 1001–1014). The exemption is authorized by Section 1009(d) of the FACA, which permits the closure of advisory committee meetings, or portions thereof, if the head of the agency to which the advisory committee reports determines such meetings may

be closed to the public in accordance with subsection (c) of the Government in the Sunshine Act (5 U.S.C. 552b(c)). In this case, the applicable provisions of 5 U.S.C. 552b(c) are subsection 552b(c)(4), which permits closure to protect trade secrets and commercial or financial information that is privileged or confidential, and subsection 552b(c)(9)(B), which permits closure to protect information that would be likely to significantly frustrate implementation of a proposed agency action were it to be disclosed prematurely. The closed session of the meeting will involve committee discussions and guidance regarding U.S. Government strategies and policies.

The open session will be accessible via teleconference. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov,* no later than April 23, 2024.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on March 14, 2024, pursuant to 5 U.S.C. 1009(d) of the FACA, that the portion of the meeting dealing with pre-decisional changes to the Commerce Control List and the U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. 1009(a)(1) and 1009(a)(3). The remaining portions of the meeting will be open to the public.

For more information, contact Ms. Springer via email.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2024–07577 Filed 4–9–24; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–469–822]

Methionine From Spain: 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 Adisseo España S.A. (Adisseo España), the sole producer and exporter subject to this administrative review, made sales of methionine from Spain at less-than-normal value (LTFV) during the period of review (POR), March 4, 2021, through August 31, 2022.

DATES: Applicable April 10, 2024.

FOR FURTHER INFORMATION CONTACT: Elizabeth Bremer, 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) 482–4987.

SUPPLEMENTARY INFORMATION:

Background

On October 6, 2023, Commerce published the *Preliminary Results* in the **Federal** Register, and invited comments from interested parties.[1] A complete summary of the events that occurred since Commerce published the *Preliminary Results,* as well as a full discussion of the issues raised by parties for these final results, are discussed in the Issues and Decision Memorandum.[2] Commerce conducted this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). On January 26, 2024, we extended the deadline for these final results to no later than April 3, 2024.[3]

Scope of the Order [4]

The merchandise covered by the *Order* is methionine from Spain. For a complete description of the scope of the *Order, see* the Issues and Decision Memorandum.

Analysis of the Comments Received

A list of the issues raised by interested parties, to which we responded in the Issues and Decision Memorandum, is provided 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 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 a review of the record and comments received from interested parties regarding our *Preliminary Results,* we made certain changes to the preliminary weighted-average dumping margin calculation for Adisseo España.[5]

Final Results of Review

As a result of this review, we determine the following estimated weighted-average dumping margin exists for the period March 4, 2021, through August 31, 2022:

Producer/exporter	Weighted-average dumping margin (percent)
Adisseo España S.A	9.24

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in these final results 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)(C) of the Act and 19 CFR 351.212(b)(1), Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with these final results.

Pursuant to 19 CFR 351.212(b)(1), we calculated importer-specific *ad valorem* duty assessment rates based on the ratio

[1] *See Methionine from Spain: Preliminary Results of Antidumping Duty Administrative Review; 2021–2022,* 88 FR 69616 (October 6, 2023) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* Memorandum, ''Decision Memorandum for the Final Results of the Administrative Review of the Antidumping Duty Order on Methionine from Spain; 2021–2022,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See* Memorandum, ''Extension of Deadline for the Final Results of Antidumping Duty Administrative Review,'' dated January 26, 2024.

[4] *See Methionine from Japan and Spain: Antidumping Duty Orders,* 86 FR 51119 (September 14, 2021) (*Order*).

[5] For a full description of changes, *see* Issues and Decision Memorandum.

of the total amount of dumping calculated for the examined sales to the total entered value of the sales for which entered value was reported. Where the respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Commerce's ''automatic assessment'' practice will apply to entries of subject merchandise during the POR for which the reviewed company did not know that the merchandise it sold to the intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, 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.[6]

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**. 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 deposit requirements will be effective for all shipments of the 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 by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for Adisseo España will be equal to the weighted-average dumping margin that is established in the ''Final Results of Review;'' (2) for previously investigated or reviewed exporters not subject to this review, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the company participated; (3) if the exporter is not a firm covered in this review, a prior review, or the LTFV investigation, but the producer is, the cash deposit rate will be the rate established for the most recently completed segment of the proceeding for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 37.53 percent *ad valorem,* the all-others rate established in the LTFV investigation.[7]

These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers Regarding the Reimbursement of Duties

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 antidumping duties prior to liquidation of the relevant entries during the POR. Failure to comply with this requirement could result in Commerce's 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 an 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

We are issuing and publishing this notice 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: April 3, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2024–07532 Filed 4–9–24; 8:45 am]

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[6] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[7] *See Order,* 86 FR at 51120.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–088]

Certain Steel Racks and Parts Thereof From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2021–2022

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that certain exporters under review sold subject merchandise at below normal value during the period of review (POR), September 1, 2021, through August 31, 2022. Additionally, Commerce determines that Hebei Minmetals Co., Ltd. (Hebei Minmetals) and Xiamen Luckyroc Industry Co., Ltd., (Xiamen Luckyroc) had no shipments of subject merchandise during the POR.

DATES: Applicable April 10, 2024.

FOR FURTHER INFORMATION CONTACT: Elizabeth Bremer or Jonathan Hill, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4987 and (202) 482–3518, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 6, 2023, Commerce published the *Preliminary Results* in the **Federal Register** and invited interested parties to comment on those results.[1] On January 29, 2024, Commerce extended the deadline to issue the final results of this review until April 3,

[1] *See Certain Steel Racks and Parts Thereof from the People's Republic of China: Preliminary Results and Partial Rescission of the Antidumping Duty Administrative Review, and Preliminary Determination of No Shipments; 2021–2022,* 88 FR 69612 (October 6, 2023) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

2024.[2] For details regarding the events that occurred subsequent to publication of the *Preliminary Results, see* the Issues and Decision Memorandum.[3] Commerce conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order [4]

The merchandise covered by the *Order* is steel racks and parts thereof. A full description of the scope of the *Order* is provided in the Issues and Decision Memorandum.

Analysis of Comments Received

We addressed all the issues raised in the case and rebuttal briefs in the Issues and Decision Memorandum. A list of the issues that parties raised, and to which we responded in the Issues and Decision Memorandum, is provided 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 a review of the record and comments received from interested parties regarding the *Preliminary Results,* we corrected several errors in our preliminary dumping margin calculations and increased the U.S. sales prices reported by Ningbo Xinguang Rack Co., Ltd./Ningbo Jiabo Rack Co., Ltd./Ningbo Lede Hardware Co., Ltd. (Xinguang Rack) by the amount of countervailing duties imposed on subject merchandise to offset an export subsidy.[5]

Final Determination of No Shipments

In the *Preliminary Results,* Commerce determined that Hebei Minmetals and Xiamen Luckyroc did not export or sell subject merchandise during the POR, nor did they have knowledge that their subject merchandise was entered into the United States during the POR.[6] No interested parties commented on Hebei Minmetals or Xiamen Luckyroc's no-shipments claims. Consequently, Commerce determines that Hebei Minmetals and Xiamen Luckyroc did not export or sell subject merchandise during the POR, or have knowledge of U.S. entries of their subject merchandise during the POR.

Separate Rates

Commerce has continued to grant Jiangsu Nova Intelligent Logistics Equipment Co., Ltd. (Nova), Xinguang Rack, Jiangsu JISE Intelligent Storage Equipment Co., Ltd. (JISE), and Nanjing Kingmore Logistics Equipment Manufacturing Co., Ltd. (Kingmore) separate rate status.[7] No parties commented on Commerce's preliminary decision to do so.

Finally, while Nanjing Dongsheng Shelf Manufacturing Co., Ltd. and Nanjing Ironstone Storage Equipment Co., Ltd. contend that they should be granted a separate rate, we have continued to find it is appropriate to reject their untimely filed separate rate information and deny these companies a separate rate.[8]

Rate for Non-Examined Separate Rate Respondents

The statute and Commerce's regulations do not address what weighted-average dumping margin to apply to respondents 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 an investigation, for guidance when calculating the dumping margin for respondents that are not individually examined in an administrative review.

Section 735(c)(5)(A) of the Act states that the all-others rate should be calculated by averaging the weighted-average dumping margins determined for individually-examined respondents, excluding rates that are zero, *de minimis,* or based entirely on facts available. When the rates determined for examined respondents are all zero, *de minimis,* or based entirely on facts available, section 735(c)(5)(B) of the Act provides that Commerce may use ''any reasonable method'' to establish the all-others rate.

The final weighted-average dumping margins calculated for the mandatory respondents Nova and Xinguang Rack are not zero, *de minimis,* or based entirely on facts available. Therefore, we calculated a weighted-average dumping margin for the non-individually examined respondents (to which we granted separate rate status) by weight averaging Nova's and Xinguang Rack's weighted-average dumping margins using the publicly ranged values of their sales of subject merchandise during the POR, consistent with the guidance in section 735(c)(5)(A) of the Act.[9]

Final Results of Review

We have determined the following estimated weighted-average dumping margins for the companies listed below for the period September 1, 2021, through August 31, 2022:

Exporter	Weighted-average dumping margins (percent)
Jiangsu Nova Intelligent Logistics Equipment Co., Ltd	11.44
Ningbo Xinguang Rack Co., Ltd./Ningbo Jiabo Rack Co., Ltd./Ningbo Lede Hardware Co., Ltd	26.90
Review-Specific Rate Applicable to Non-Examined Companies	
Jiangsu JISE Intelligent Storage Equipment Co., Ltd	12.73
Nanjing Kingmore Logistics Equipment Manufacturing Co., Ltd	12.73

[2] *See* Memorandum, ''Extension of Deadline for Final Results of Antidumping Duty Administrative Review,'' dated January 29, 2024.

[3] *See* Memorandum, ''Decision Memorandum for the Final Results of the Administrative Review of the Antidumping Duty Order on Certain Steel Racks and Parts Thereof from the People's Republic of China; 2021–2022,'' dated concurrently with, and hereby adopted by, this notice.

[4] *See Certain Steel Racks and Parts Thereof from the People's Republic of China: Amended Final Affirmative Antidumping Duty Determination and Antidumping Duty Order; and Countervailing Duty Order,* 84 FR 48584 (September 16, 2019) (*Order*).

[5] *See* Issues and Decision Memorandum.

[6] *See Preliminary Results* PDM at 3–4.

[7] *Id.* at 13.

[8] *Id.* at 13–14; *see also* Issues and Decision Memorandum at Comments 7 and 8.

[9] *See* Memorandum, ''Calculation of the Dumping Margin for Respondents Not Selected for Individual Examination for the Final Results,'' dated concurrently with this notice.

Disclosure

Commerce intends to disclose to parties to the proceeding the calculations performed for these final results of review 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)(C) of the Act and 19 CFR 351.212(b), Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise covered by the final results of this review. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication date 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).

For Nova and Xinguang Rack, we calculated importer-specific assessment rates in accordance with 19 CFR 351.212(b)(1).[10] Where the respondent reported reliable entered values, we calculated importer-specific *ad valorem* assessment rates by dividing the total amount of dumping calculated for all reviewed U.S. sales to the importer by the total entered value of the subject merchandise sold to the importer.[11] Where the respondent did not report entered values, we calculated importer-specific per-unit assessment rates by dividing the total amount of dumping calculated for all reviewed U.S. sales to the importer by the total quantity of those sales. We also calculated an estimated *ad valorem* importer-specific assessment rate to determine whether the per-unit assessment rate is *de minimis* (*i.e.,* 0.50 percent or less).[12]

Where an importer-specific *ad valorem* assessment rate is not zero or *de minimis,* Commerce will instruct CBP to collect the appropriate duties at the time of liquidation. Where an importer-specific *ad valorem* assessment rate is zero or *de minimis,* Commerce will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Where sales of subject merchandise exported by an individually examined respondent were not reported in the U.S. sales data submitted by the respondent, but the merchandise was entered into the United States during the POR under the CBP case number of the respondent, Commerce will instruct CBP to liquidate any entries of such merchandise at the weighted-average dumping margin for the China-wide entity (*i.e.,* 144.50 percent).[13] Additionally, where Commerce determines that an exporter under review made no shipments of subject merchandise during the POR, Commerce will instruct CBP to liquidate any suspended entries of subject merchandise that entered under that exporter's CBP case number during the POR at the weighted-average dumping margin for the China-wide entity.

The antidumping duty assessment rates for JISE and Kingmore, the companies not individually examined in this administrative review that qualified for a separate rate, will be equal to the weighted-average dumping margin listed for JISE and Kingmore in the table above.

For Nanjing Dongsheng Shelf Manufacturing Co., Ltd. and Nanjing Ironstone Storage Equipment Co., Ltd., the companies not eligible for a separate rate and which Commerce considers to be part of the China-wide entity, the assessment rate will be equal to the weighted-average dumping margin for the China-wide entity, *i.e.,* 144.50 percent.[14]

Cash Deposit Requirements

The following cash deposit requirements will be in effect for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on, or after, the date of publication of this notice in the **Federal Register**, as provided for by section 751(a)(2)(C) of the Act: (1) for the companies listed in the table above, the cash deposit rate will be equal to the weighted-average dumping margin listed for the company in the table; (2) for a previously investigated or reviewed exporter of subject merchandise not listed in the table above that has a separate rate, the cash deposit rate will continue to be the exporter's existing cash deposit rate; (3) for all China exporters of subject merchandise that do not have a separate rate, the cash deposit rate will be equal to the weighted-average dumping margin assigned to the China-wide entity, which is 144.50 percent; and (4) for a non-China exporter of subject merchandise that does not have a separate rate, the cash deposit rate will be equal to the weighted-average dumping margin applicable to the China exporter that supplied that non-China exporter.

These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers Regarding the Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during the POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties and/or an increase in the amount of antidumping duties by the amount of the countervailing duties.

Administrative Protective Order (APO)

This notice also serves as a reminder to parties subject to APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, 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 terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

We are issuing these final results of administrative review and publishing this notice in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.213(h)(2) and 351.221(b)(5).

Dated: April 3, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

[10] We applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012).

[11] *See* 19 CFR 351.212(b)(1).

[12] *Id.*

[13] *See Order,* 84 FR at 48586.

[14] *Id.*

[FR Doc. 2024–07586 Filed 4–9–24; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD550]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Columbia Gulf East Lateral XPRESS Project

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: Pursuant to the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to Columbia Gulf, LLC (Columbia Gulf) to incidentally harass, by Level B harassment only, marine mammals during pile driving activities associated with the East Lateral XPRESS construction project (the Project) in Barataria Bay, Louisiana. There are no changes from the proposed authorization in this final authorization.

DATES: This authorization is effective from December 1, 2023, to November 30, 2024.

ADDRESSES: Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable.* In case of problems accessing these documents, please call the contact listed below.

FOR FURTHER INFORMATION CONTACT: Cara Hotchkin, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are proposed or, if the taking is limited to harassment, a notice of a proposed IHA is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the monitoring and reporting of the takings. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

Summary of Request

On March 3, 2023, NMFS received a request from TC Energy/Columbia Gulf Transmission, LLC for an IHA to take marine mammals incidental to construction activities that include pile driving to install: (1) a point of delivery metering station (POD), and (2) a tie-in facility (TIF) in Barataria Bay. The Project is intended to provide feed fuel for on-shore Liquefied Natural Gas (LNG) compressor stations. The application was deemed adequate and complete on June 5, 2023. Columbia Gulf's request is for take of bottlenose dolphin (*Tursiops truncatus,* Barataria Bay Estuarine System stock, BBES) by Level B harassment only. Neither Columbia Gulf nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

Description of Specified Activity

Overview

Columbia Gulf proposes to construct two new compressor stations, a new meter station, approximately 8 miles (13 kilometers) of new 30-inch diameter natural gas pipeline lateral, two new mainline valves, a TIF, launcher and receiver facilities, and other auxiliary appurtenant facilities all located in St. Mary, Lafourche, Jefferson, and Plaquemines parishes, Louisiana. A summary of all construction activities necessary to complete all elements of the Project are shown in table 1.

TABLE 1—ALL ELEMENTS OF THE PROJECT

[Bolded elements include in-water activities that may result in the take of marine mammals]

Facility	Parish	Pipeline milepost location	Description
Pipeline Facilities			
30-inch Pipeline Lateral	Jefferson ..... Plaquemines	0.00–2.47 ..... 2.47–8.14	Install approximately 13.1 kilometers (8.14) miles of new 30-inch- diameter pipeline lateral.

TABLE 1—ALL ELEMENTS OF THE PROJECT—Continued

[Bolded elements include in-water activities that may result in the take of marine mammals]

Facility	Parish	Pipeline milepost location	Description
Aboveground Facilities			
Centerville Compressor Station.	St. Mary	66.50[a], 66.70[b], 67.00[c]	Construct a new gas-fired compressor station with a 23,470 hp compressor unit, which will interconnect with Columbia Gulf's existing EL–100, EL–200, and EL–300 pipelines.
Golden Meadow Compressor Station.	Lafourche	149.50[c]	Construct a new gas-fired compressor station with a 23,470 hp compressor unit, which will interconnect with Columbia Gulf's existing EL–300 pipeline.
Point of Delivery Meter Station.	Plaquemines	8.14	Construct one POD meter station at the terminus of the new 30-inch pipeline lateral on an existing platform shared with Venture Global Gator Express, LLC. A 30-inch pig receiver will also be installed at the POD Meter Station.
Tie-in Facility	Jefferson	0.00	Install a new TIF situated on a new platform at the intersection of the new 30-inch pipeline and Columbia Gulf's existing EL–300 pipeline. A 30-inch pig launcher will also be Installed at the TIF.
Valves and Other Ancillary Facilities.	Jefferson	0.00, 1.71[c]	Install one new 30-inch mainline valve assembly on the new 30-inch pipeline lateral and one new 24-inch mainline valve assembly Columbia Gulf's existing EL–300 pipeline. Both mainline valve assemblies will be situated on the new TIF platform.

[a] Milepost is associated with Columbia Gulf's existing EL–100 pipeline.
[b] Milepost is associated with Columbia Gulf's existing EL–200 pipeline.
[c] Milepost is associated with Columbia Gulf's existing EL–300 pipeline.

Construction of the Project will temporarily impact 2.79 acres, permanently alter 0.02 acres and include in-water activity that may result in take of marine mammals in Barataria Bay. Specifically, in order to provide fuel supply services to onshore LNG compressor stations, Columbia Gulf proposes pile driving to construct a new POD Meter Station on an existing platform and a new TIF at the terminus of a new 30-inch lateral pipeline. Project activities include installation, by impact hammer, of 20 18-inch concrete piles and 104 36-inch spun cast piles. The new POD Meter Station will include the installation of three 16-inch meter runs and related facilities. The new POD Meter Station will be constructed at the site of an existing platform, and construction will require the installation of four new 18-inch square concrete piles to protect a 30-inch- diameter riser. Pipelines will be installed by jetting and dredging with displaced sediment precipitating back to the substrate or being side-cast adjacent to the trench, respectively.

The new TIF will be situated on a new 180 foot (ft; 55 meter (m)) long by 80 ft (24.3 m) wide platform supported by 104 36-inch-diameter spun cast and 4 18-inch-diameter concrete piles. Two 24-inch-diameter and one 30-inch-diameter risers will be protected by 12 8-inch diameter concrete piles. The TIF will include a boat landing measuring 10 ft (3 m) long by 10 ft (3 m) wide that will be used for maintenance and servicing of the platform.

Dates and Duration

Construction was planned to begin in January 2024 in order to meet a planned in-service date of April 2025. Pile driving within Barataria Bay will occur within a 3 month period within the 1-year effective dates of the IHA, from December 1, 2023, through November 30, 2024. Pile driving activity will be intermittent, conducted in accordance with project phasing requirements, and as such will not be continuous throughout the 3-month period. Pile driving activities will take place from 7 a.m. to 7 p.m. (adjusted as appropriate to conduct work during daylight hours), and may occur on any day of the week (five piles per day). In-water work is planned to occur on between 25 and 42 days. The pile specifications and method of installation are presented in table 2, below.

A detailed description of the Project is provided in the **Federal Register** notice for the proposed IHA (88 FR 61530, September 7, 2023). Since that time, no changes have been made to the pile driving activities described in the notice. Therefore, a detailed description is not provided here. Please refer to that **Federal Register** notice for the description of the specific activity.

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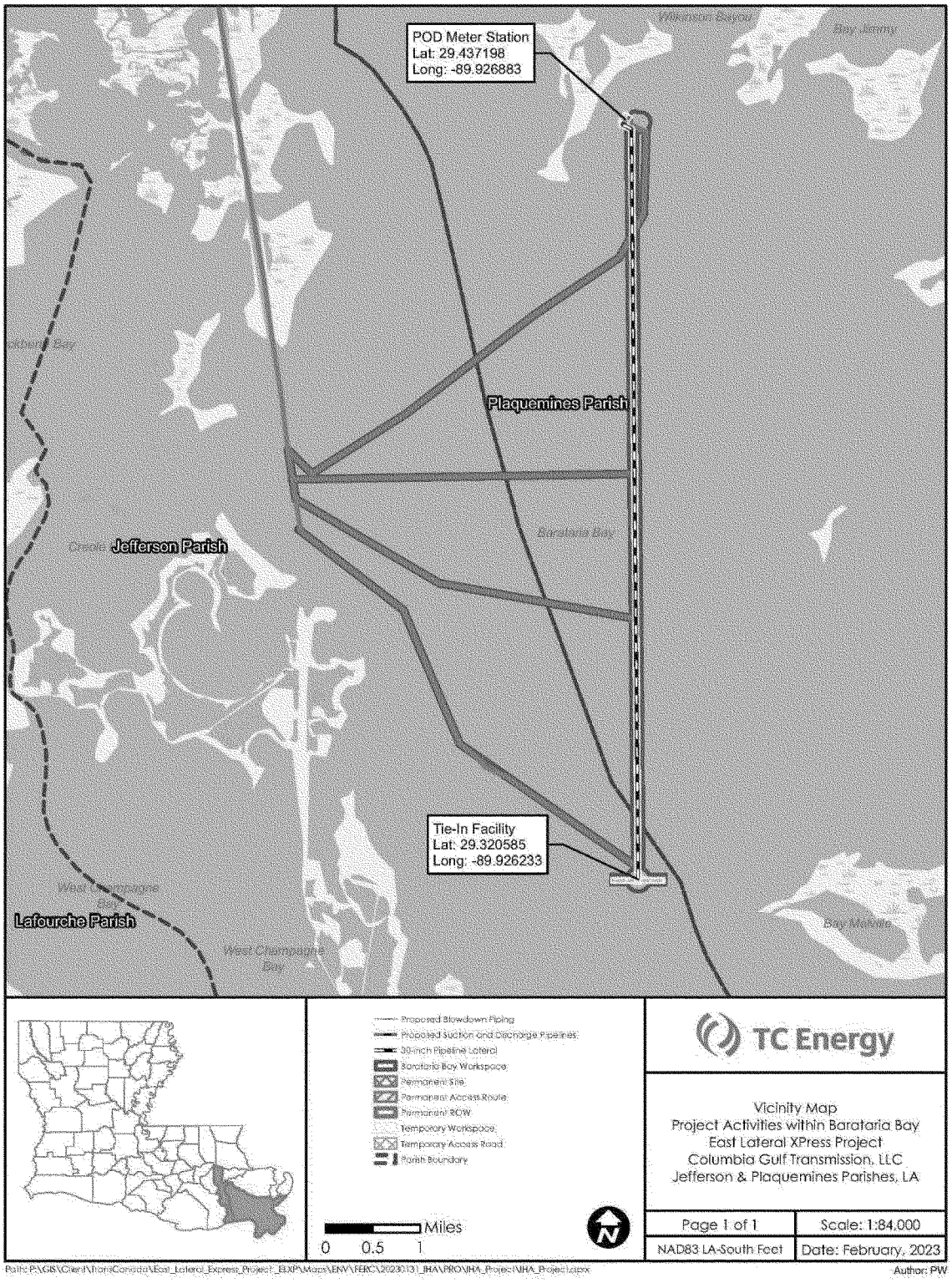

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Figure 1—Map of Project Area and Features

TABLE 2—PILE DRIVING ACTIVITIES

Location	Number of piles	Pile diameter/type	Proxy pile for calculations	Impact strikes per pile	Piles per day	Strikes per day	Days of installation
Tie-in Facility	104	36″ Spun Cast Concrete Piles.	36″ Concrete (round, hollow)	4,800	5	24,000	24
Tie-in Facility	16	18″ Concrete (round).		.....	.....	.....	.....
Point of Delivery Platform.	4	18″ Concrete (square).		.....	.....	.....	1
Total	120	.....	.....	.....	.....	.....	25

Comments and Responses

Notice of NMFS's proposal to issue an IHA to Columbia Gulf was published in the **Federal Register** on September 7, 2023 (88 FR 61530). That notice described, in detail, Columbia's activity, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals. In that notice, we requested public input on the request for authorization described therein, our analyses, the proposed authorization, and any other aspect of the notice of proposed IHA, and requested that interested persons submit relevant information, suggestions, and comments.

During the 30-day public comment period, NMFS received one comment letters from the Sierra Club. The Sierra Club expressed submitted a public comment expressing its concerns, providing recommendations, and attaching a March 2022 letter sent to NMFS' Southeast Regional Field Office on projects located further north in Barataria Bay. The Sierra Club also submitted a short cover letter transmitting more than 700 signatures from individuals expressing general concern over the Columbia project's effect on the BBES stock of bottlenose dolphins and Barataria Bay as a whole. There were no other public comments submitted. A summary of the comments received from the Sierra Club and NMFS' response are provided below. The comments are available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable.* Please see the comment submissions at the link provided in order to access the complete set of comments and the accompanying rationale.

Comment: In summary, the Sierra Club comments suggest that NMFS did not adequately consider the ongoing impacts to the Barataria Bay stock of bottlenose dolphins from the 2010 Deepwater Horizon (DWH) oil spill. Specifically, they asserted that, given the poor health of some of the individuals, some of the impacts we evaluated and predicted would be in the form of Level B harassment may actually manifest in the form of Level A harassment, and that a greater number of takes by Level B harassment may occur than are authorized or analyzed. They also suggest that NMFS should further consider the impact from this project in connection with impacts to the species from the numerous additional oil and gas infrastructure projects proposed in this area, and assess whether these projects will contribute to further impacts to this dolphin population.

Response: This short duration, low impact construction project includes 25 to 42 non-consecutive days of in-water work spread out across a 3-month period. We expect lower-level acoustic exposures from a dolphin swimming through the comparatively small ensonified zone on a day or two. The Level B harassment zone is about 430 m and the Level A harassment zone is just under 50 m, and there is a mandatory 50-m monitored shutdown zone that is expected to avoid Level A harassment. As a result, we are authorizing 42 takes by Level B harassment of Barataria Bay bottlenose dolphins.

NMFS' **Federal Register** notice of proposed IHA did consider the impact the DWH spill has had on the BBES stock. Even so, the agency made a preliminary negligible impact determination due to the nature of the specified activity as a whole and the estimated takes. While it may be true that the effects of exposure to the elevated sound levels of the pile driving might affect a dolphin in a more compromised condition (such as those that have been exposed to the DWH spill) in a slightly more severe way, the comments offer no information supporting the idea that Level A harassment (*i.e.,* injury) could result, nor that there might be more Level B harassment than estimated.

Given the small footprint of the activity, the small number of takes, and the very low likelihood that any individual dolphin will be taken on more than a few likely non-consecutive days, even given the potential more weakened state of any specific individual dolphin, there is no evidence that the activity will result in the Level A harassment of any individual, that the take by Level B harassment will be more numerous than authorized, or that the result of one animal incurring Level B harassment on 1 to a few days within 1 year from this activity will result in the scale of energetic impacts that could affect fitness, reproduction, or survival of any individual dolphins.

Regarding the suggestion that NMFS consider the impacts of this project in conjunction with the impacts of numerous other oil and gas infrastructure projects in the area, section 101(a)(5)(D) of the MMPA specifies NMFS consider the impacts of the ''specified activity'' in making a negligible impact determination. The impacts of other activities are considered in the baseline of the analysis, as described in the notice for the proposed IHA. Specific to the two projects referenced in the Sierra Club letter, Venture Global's ''Gator Express'' and ''Plaquemines,'' construction on the latter project is not anticipated in the near future, and the Gator Express in-water work in Barataria Bay consists primarily of installation of small (12-in) piles, the impacts of which are be expected to be minor avoidance of a comparatively small impact area and not reasonably anticipated to change the baseline for Barataria Bay bottlenose dolphins. Further, while other projects that are not the subject of this IHA may have impacts on the Barataria Bay bottlenose dolphin population, the limited impacts authorized by this IHA will not significantly, incrementally increase the scale or severity of impacts, either alone or in combination, as determined in the analyses supporting NMFS' National Environmental Policy Act determination that a Categorical Exclusion is appropriate for this IHA.

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of BBES bottlenose dolphins. NMFS fully considered all of this information, including relevant citations which may be included here, and we refer the reader to these materials instead of reprinting the information. Additional information regarding population estimates and potential threats for BBES bottlenose dolphins, can be found in NMFS' Stock Assessment Reports (SARs) at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments* and more information about this species in general (*e.g.,* physical and behavioral descriptions) may be found on NMFS' website (*https://www.fisheries.noaa.gov/find-species*).

Take of BBES bottlenose dolphins may occur incidental to the specified activities described in the request for authorization. Information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known is provided in table 3. PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no serious injury or mortality is authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species or stocks and other threats.

TABLE 3—MARINE MAMMAL SPECIES LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES [1]

Common name	Scientific name	Stock	ESA/MMPA status; Strategic (Y/N) [2]	Stock abundance (CV, Nmin, most recent abundance survey) [3]	PBR	Annual M/SI [4]
Family Delphinidae:						
Bottlenose dolphin	*Tursiops truncatus*	Barataria Bay Estuarine Stock	-/-; Y	2,071 (0.06, 1,971, 2019)	18	160

[1] Information on the classification of marine mammal species can be found on the web page for The Society for Marine Mammalogy's Committee on Taxonomy (*https://marinemammalscience.org/science-and-publications/list-marine-mammal-species-subspecies/;* Committee on Taxonomy (2022)).

[2] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[3] NMFS marine mammal stock assessment reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance.

[4] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, vessel strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995, Wartzok and Ketten, 1999, Au and Hastings, 2008). To reflect this, Southall *et al.* (2007, 2019) recommended that marine mammals be divided into hearing groups based on directly measured (behavioral or auditory evoked potential techniques) or estimated hearing ranges (behavioral response data, anatomical modeling, *etc.*). Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in table 4.

TABLE 4—MARINE MAMMAL HEARING GROUPS

[NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, Kogia, river dolphins, Cephalorhynchid, Lagenorhynchus cruciger & L. australis).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.,* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006, Kastelein *et al.,* 2009, Reichmuth *et al.,* 2013).

For more detail concerning these groups and associated frequency ranges,

please see NMFS (2018) for a review of available information.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

The effects of underwater noise from pile driving for Columbia Gulf's activities have the potential to result in behavioral harassment of marine mammals in the vicinity of the Project area. The notice of proposed IHA (88 FR 61530, September 7, 2023) included a discussion on the effects of anthropogenic noise on marine mammals and the potential effects of underwater noise from Columbia Gulf's construction activities on marine mammals and their habitat. That information and analysis is referenced in this final IHA determination and is not repeated here; please refer to the notice of proposed IHA (88 FR 61530, September 7, 2023).

Estimated Take of Marine Mammals

This section provides an estimate of the number of incidental takes authorized through this IHA, which informed both NMFS' consideration of ''small numbers'' and the negligible impact determinations.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes are by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to sound emanated from pile driving activity. Based on the nature of the activity and the anticipated effectiveness of the mitigation measures including the utilization of Protected Species Observers to monitor for marine mammals and implementation of pre-clearance and soft start protocols discussed in detail below in the Mitigation section, Level A harassment is neither anticipated nor authorized. Specifically, in-water construction activities will be completed in less than 3 months (a total of 25 to 42 days) and are not expected to result in serious injury or mortality to marine mammals within Barataria Bay. Based on calculated threshold distances for mid-frequency cetaceans, an individual dolphin would need to remain within 43 meters of the piles being driven through the entire day of pile driving activity in order for injury from cumulative exposure to occur. Given the mobility of bottlenose dolphins and the expected avoidance behavior of the species when encountering noise disturbance (*i.e.,* pile driving), such a scenario is extremely unlikely to occur.

The method for calculating take by Level B Harassment was described in the **Federal Register** notice announcing the proposed IHA and remains unchanged. Accordingly, the amount of authorized take is also the same as that presented in the proposed IHA.

For acoustic impacts, generally speaking, we estimate take by considering: (1) acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment for example, permanent threshold shift (or PTS); (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) the number of days of activities. We note that while these factors can contribute to a basic calculation to provide an initial prediction of potential takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the authorized take estimates.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source or exposure context (*e.g.,* frequency, predictability, duty cycle, duration of the exposure, signal-to-noise ratio, distance to the source), the environment (*e.g.,* bathymetry, other noises in the area, predators in the area), and the receiving animals (hearing, motivation, experience, demography, life stage, depth) and can be difficult to predict (*e.g.,* Southall *et al.,* 2007, 2021, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a metric that is both predictable and measurable for most activities, NMFS typically uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS generally predicts that marine mammals are likely to be behaviorally harassed in a manner considered to be Level B harassment when exposed to underwater anthropogenic noise above root-mean-squared pressure received levels (RMS SPL) of 120 dB (referenced to 1 microPascal (re 1 µPa)) for continuous (*e.g.,* vibratory pile driving, drilling) and above RMS SPL 160 dB re 1 µPa for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources. Generally speaking, Level B harassment estimates based on these behavioral harassment thresholds are expected to include any likely takes by Temporary Threshold Shift (TTS) as, in most cases, the likelihood of TTS occurs at distances from the source less than those at which behavioral harassment is likely. TTS of a sufficient degree can manifest as behavioral harassment, as reduced hearing sensitivity and the potential reduced opportunities to detect important signals (conspecific communication, predators, prey) may result in changes in behavior that would not otherwise occur. Columbia Gulf's Request for Authorization includes actions known to generate impulsive sound (impact pile driving) that may cause incidental harassment, and therefore the RMS SPL threshold of 160 re 1 µPa is applicable.

Level A harassment—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). The specified activity planned by Columbia Gulf includes the use of an impulsive source type and is planned to occur in an area where BBES bottlenose dolphins, a mid-frequency cetacean, are found.

These thresholds are provided in the table below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS' 2018 Technical Guidance, available at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 5—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset thresholds* (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{p,0\text{-}pk,flat}$*:* 219 dB; $L_{E,p,LF,24h}$*:* 183 dB	*Cell 2:* $L_{E,p,LF,24h}$*:* 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{p,0\text{-}pk,flat}$*:* 230 dB; $L_{E,p,MF,24h}$*:* 185 dB	*Cell 4:* $L_{E,p,MF,24h}$*:* 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{p,0\text{-}pk,flat}$*:* 202 dB; $L_{E,p,HF,24h}$*:* 155 dB	*Cell 6:* $L_{E,p,HF,24h}$*:* 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{p,0\text{-}pk,flat}$*:* 218 dB; $L_{E,p,PW,24h}$*:* 185 dB	*Cell 8:* $L_{E,p,PW,24h}$*:* 201 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{p,0\text{-}pk,flat}$*:* 232 dB; $L_{E,p,OW,24h}$*:* 203 dB	*Cell 10:* $L_{E,p,OW,24h}$*:* 219 dB.

* Dual metric thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds are recommended for consideration.

Note: Peak sound pressure level ($L_{p,0\text{-}pk}$) has a reference value of 1 µPa, and weighted cumulative sound exposure level ($L_{E,p}$) has a reference value of 1µPa^{2}s. In this Table, thresholds are abbreviated to be more reflective of International Organization for Standardization standards (ISO 2017). The subscript "flat" is being included to indicate peak sound pressure are flat weighted or unweighted within the generalized hearing range of marine mammals (*i.e.,* 7 Hz to 160 kHz). The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The weighted cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that are used in estimating the area that may be ensonified to levels above the acoustic thresholds, including source levels and transmission loss coefficient.

To calculate the ensonified area, Columbia Gulf used the NMFS User Spreadsheet and accompanying 2018 guidance. Columbia Gulf located data for impact installation of a 36 inch concrete pile (MacGillivray *et al.,* 2007), measured at 50 meters, to serve as a suitable proxy source level for the 104 36-inch spun-cast piles selected for the project (see table 6). The applicant then elected to apply the source levels for the 36-in proxy pile to all piles being driven, including the 20 18-inch piles, likely resulting in an overestimate of resulting noise from these smaller piles.

Transmission loss (TL) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry and bottom composition and topography. The general formula for underwater TL is:

TL = B * Log10 (R1/R2), where:
TL = Transmission loss in dB,
B = Transmission loss coefficient,
R1 = the distance of the modeled SPL from the driving pile, and
R2 = the distance from the driven pile of the initial measurement.

Absent site-specific acoustic monitoring with differing measured transmission loss, a practical spreading value of 15 is used as the transmission loss coefficient. Site-specific transmission loss data for the project area in Barataria Bay is not available; therefore, the default coefficient of 15 is used to determine the distances to the Level A harassment and Level B harassment thresholds. The ensonified area associated with Level A harassment is more technically challenging to predict due to the need to account for a duration component. Therefore, NMFS developed an optional User Spreadsheet and accompanying Technical Guidance that can be used to relatively simply predict an isopleth distance for use in conjunction with marine mammal density or occurrence to help predict potential takes. We note that because of some of the assumptions included in the methods underlying the optional tool, we anticipate that the resulting isopleth estimates are typically overestimates of some degree, which may result in an overestimate of potential Level A harassment. However, this optional tool offers the best way to estimate isopleth distances when more sophisticated modeling methods are not available or practical. For stationary sources such as pile driving, the User Spreadsheet tool predicts the distance at which, if a marine mammal remained at that distance for the duration of the activity, it would be expected to incur PTS. Inputs used in the option User Spreadsheet tool, and the resulting estimated isopleths, are reported in tables 6 and 7, below. The applicant applied a 15LogR propagation loss rate in the User Spreadsheet, and included a 5 dB attenuation factor for use of a bubble curtain which is consistent with NMFS recommendations.

TABLE 6—PROXY PILE CHARACTERISTICS

[User spreadsheet input]

Pile type	SLs			Measured distance (m)	Source
	dB Peak	dB rms	dB SEL		
36″ concrete pile, Impact pile driven (5 dB attenuated)	186	174	160	50	MacGillivray *et al.,* 2007.

To calculate the harassment zones, Columbia Gulf identified a representative location in the center of the TIF and second representative location in the center of the POD Meter Station and used these locations to calculate the harassment zones for each site. Given the close proximity of individual piles to one another, NMFS concurred with this approach. Columbia Gulf then accessed the User Spreadsheet to calculate the distance from each of the two representative pile driving locations to the furthest extent of Level A and Level B thresholds for mid-

frequency cetaceans. In order to ensure conservative results, the source level data for 36 inch piles was used as a proxy for all pile driving activities, including installation of smaller diameter piles.

TABLE 7—HARASSMENT ZONE ISOPLETHS ATTRIBUTABLE TO PILE DRIVING

Activity	Distance from representative sound source	
	PTS: Level A harassment zone (mid-frequency cetaceans)	Behavioral disturbance: Level B harassment zone (all marine mammals)
Impact pile driving in Barataria Bay [a]	43.2 m	428.9 m.

[a] User Spreadsheet output based on installation by impact hammer of (proxy) 36-inch-diameter concrete piles, and use of bubble curtains (estimated 5 dB reduction, per consultations with NMFS) (MacGillivray *et al.,* 2007).

Based on the User Spreadsheet outputs reflected in table 7, the Level B harassment zone would have a radius of approximately 428.9 m (m; 1,407.0 ft) from the source pile, or an approximate area of 0.58 square kilometers (km^2). The Level A zone would have a calculated radius of approximately 43.2 m (142.0 ft), or an approximate area of 0.006 km^2 (63,347 square feet (ft^2)). Columbia Gulf plans to implement a 50 m shutdown zone that extends coverage beyond the 43.2 m Level A harassment zone indicated by the User Spreadsheet. As a result, given that detection of bottlenose dolphins within this distance is expected to be successful, no Level A take is anticipated to occur, or is authorized, as a result of project activities.

Marine Mammal Occurrence

In order to estimate the distribution and density of BBES dolphins that may occur in the area affected by the specified activity, we turned to prior area-specific surveys and studies conducted in the Bay.

Density estimates for Columbia Gulf's proposal reference the findings of the 2017 McDonald (*et al.*) study and an average of the calculated densities for each habitat region defined within the study area. Density estimates for bottlenose dolphins within Barataria Bay were derived from estimates calculated through vessel-based capture-mark-recapture photo-ID surveys conducted during ten survey sessions from June 2010 to May 2014 (McDonald *et al.,* 2017). Because the surveys were conducted during the DWH oil spill, the resulting density estimate does not account for mortality following the spill.

The study was conducted from June 2010 to May 2014 and utilized vessel-based capture-mark-recapture photo ID surveys. The study area for these surveys included Barataria Bay and Pass, Bayou Rigaud, Caminada Bay and Pass, Barataria Waterway, and Bay des Ilettes. Densities varied in different areas within broader Barataria Bay, and the study area was divided into three (East, West, and Island) habitat regions to capture these observed density variations. Results were parsed and densities were calculated for each habitat region. Project activities may have some effect on both the East and West habitat regions, with estimated densities of 0.601 individuals per km^2 and 1.24 individuals per km^2, respectively. Study results indicate density of 11.4 individuals per km^2 for the Island region. Given uncertainties regarding fidelity to and transiting among habitat regions, the average densities for each habitat region in the study area are then averaged together to create an estimated density for the project area. NMFS concurs with this approach. Inclusion of the higher estimated density from the Island habitat region results in a cumulative average higher than the estimated density for the East and West habitat regions alone, and reflects a conservative approach. Based on this calculation and using the best available information for estimating density given the project type and location, the average bottlenose dolphin density for the project is estimated to be 2.83 individuals per km^2.

Take Estimation

Here we describe how the information provided above is synthesized to produce a quantitative estimate of the take that is reasonably likely to occur (and authorized).

TABLE 8—LEVEL B HARASSMENT TAKES REQUESTED AND PERCENTAGE OF STOCK POTENTIALLY AFFECTED

Pile driving location	Species	Estimated density	Level B harassment area	Level B takes requested (individuals)	Stock abundance (individuals)	Percentage (%) of stock potentially affected by level B take
Tie-In Facility	Bottlenose Dolphin	2.83 individuals per km^2	0.58 km^2	40	2,071	1.93
POD Meter Station.				2		0.10
Project Totals				42		2.03

Level B harassment take estimates for pile driving activities were calculated using the density estimate described above, averaging across the three areas in Barataria Bay. The Level B harassment zone is calculated using source level data for 36-inch concrete piles (including use of bubble curtains) and assumes an even distribution of animals throughout the affected area. Initial Level B take estimates for TIF and POD Meter Station pile driving activity were calculated using the area of the Level B harassment zone (0.58 km^2) multiplied by the calculated density (2.83 individuals per km^2). This results in a daily take estimate of 1.64 individuals for pile driving at the TIF and the POD Meter Station. The daily Level B harassment estimate (1.64 individuals) was then multiplied by the number of days when pile driving will take place (24 days at the TIF and 1 day at the POD Meter Station) to calculate the number of requested takes for pile driving related to the Project. The estimated takes are indicated in table 8.

Level A harassment is not anticipated to occur and authorization was not requested. In-water construction

activities will be completed within 1–2 months (a total of 25 to 42 days) and are not expected to result in serious injury or mortality to marine mammals within Barataria Bay. Based on calculated threshold distances in Table 7 for mid-frequency cetaceans, an individual would need to remain within 142.0 ft of the piles being driven throughout the entire day of pile driving activities for cumulative exposure injury to occur. Given the mobility of bottlenose dolphins and the expected behavior of the species to avoid noise disturbance (*i.e.,* pile driving), such a scenario is extremely unlikely to occur.

Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, NMFS considers two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, and impact on operations.

Mitigation for Marine Mammals and Their Habitat

As described below, Columbia Gulf will retain and deploy qualified Protected Species Observers to implement a clearance zone to ensure that BBES bottlenose dolphins are not present within 430 meters of the pile being driven when pile driving activities begin, and also a 50-meter shutdown zone to ensure that dolphins and other marine mammals are not exposed to levels of construction noise associated with Level A harassment. A bubble curtain will be used to lower the overall levels of sound produced by the pile driving, and soft-start measures will allow for even lower sound levels when pile driving starts, allowing time for marine mammals to move away from the source before it gets louder. Columbia Gulf must implement the following mitigation measures:

(a) The Holder must employ Protected Species Observers (PSOs) and establish monitoring locations as described in section 5 of this IHA. The Holder must monitor the Project area to the maximum extent possible based on the required number of PSOs, required monitoring locations, and environmental conditions.

(b) Monitoring must commence 30 minutes prior to initiation of pile driving activity. (*i.e.,* pre-start clearance monitoring) and be continuously maintained until 30 minutes post-completion of pile driving activity.

(c) Pile driving may only begin if visibility is sufficient to allow monitoring of the entire pre-clearance zone (430 m) and the lead PSO determines that it has been clear of marine mammals for 30 consecutive minutes.

(d) If a marine mammal is observed entering or within the shutdown zone (50 m), pile driving activity must be suspended. Pile driving may only commence or resume as described in condition 4(e) of this IHA.

(e) If pile driving is delayed due to the presence of a marine mammal in the pre-start clearance zone or the shutdown zone, the activity may not commence or resume until either the animal has voluntarily exited and been visually confirmed beyond the applicable protective zone, or after 15 minutes have passed without re-detection of the animal.

(f) The Holder must employ soft-start procedures at the start of each day's pile driving activity, and at any time following cessation of impact pile driving that lasts for 30 minutes or longer. Soft-starts require an initial set of three strikes at reduced energy, followed by a 30-second waiting period, then two subsequent reduced-energy strike sets.

(g) The Holder must use a bubble curtain during impact pile driving. The bubble curtain must be operated in a manner most likely to achieve optimal sound dampening performance. At a minimum, the Holder must adhere to the following performance standards:

(i) The bubble curtain must distribute air bubbles around 100 percent of the piling circumference for the full depth of the water column.

(ii) The lowest bubble ring must be in contact with the substrate for the full circumference of the ring, and weights attached to the bottom ring shall ensure 100 percent substrate contact. No parts of the ring or other objects shall prevent full substrate contact.

(iii) Air flow to the bubblers must be balanced around the circumference of the pile.

(h) Pile driving activity must be halted (as described in condition 4(d) of this IHA) upon observation, at any distance, of either a species for which incidental take is not authorized or a species for which incidental take has been authorized but the authorized number of takes has been met (as shown in table 1 of the IHA).

(i) The Holder, construction supervisors and crews, PSOs, and other personnel must avoid direct physical interaction with marine mammals during construction. If a marine mammal comes within 10 meters of construction activity, operations must cease and vessels must reduce speed to the minimum level required to maintain steerage and safe working conditions, and take other actions as may be necessary to avoid direct physical interaction with the animal.

Based on our evaluation of the applicant's planned measures, NMFS has determined that the planned mitigation measures provide the means of effecting the least practicable impact to BBES bottlenose dolphins and their habitat.

Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be

present while conducting the activities. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring. Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the activity; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and,
- Mitigation and monitoring effectiveness.

Monitoring

The following monitoring will be required during pile installation activities associated with the East Later XPRESS Project:

(a) The Holder must establish at least one monitoring location that provides optimal visibility of the pre-clearance and shutdown zone for each location where pile driving will occur. For all pile driving activities, a minimum of one PSO must be assigned to each active pile driving location to log all marine mammal sightings and to monitor the shutdown zone.

(b) PSOs must record all observations of marine mammals, regardless of distance from the pile being driven, as well as the additional data indicated in section 6 of this IHA.

(c) Monitoring must be conducted by qualified, NMFS-approved PSOs, in accordance with the following conditions:

(i) PSOs must be independent of the contractor conducting the specified pile driving activity (for example, employed by a subcontractor) and have no other assigned tasks during monitoring periods.

(ii) At least one PSO must have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization.

(iii) Other PSOs may substitute other relevant experience, education (degree in biological science or related field), or training for prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization.

(iv) If a team of three or more PSOs is needed in order to meet monitoring requirements, a lead observer or monitoring coordinator must be designated. The lead observer must have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization.

(v) PSOs must be approved by NMFS prior to beginning any activity subject to this IHA.

Reporting

Columbia Gulf is required to implement the following reporting measures:

(a) Columbia Gulf must submit its draft marine mammal monitoring report for the Project describing all monitoring activities conducted under this IHA within 90 calendar days of the completion of monitoring, or 60 calendar days prior to the requested issuance of any subsequent IHA for construction activity at the same location, whichever comes first. A final report must be prepared and submitted within 30 calendar days following receipt of any NMFS comments on the draft report. If no comments are provided by NMFS within 30 calendar days of receipt of the draft report, the report shall be considered final.

(b) All draft and final monitoring reports must be submitted to both *PR.ITP.MonitoringReports@noaa.gov* and *ITP.hotchkin@noaa.gov.*

(c) The marine mammal monitoring report must contain the informational elements described in the Request for Authorization, and must include:

(i) Dates and times (begin and end) of all marine mammal monitoring shifts;

(ii) Construction activities occurring during each daily observation period, including:

A. The number and type of piles that were driven and the method (*e.g.,* impact, vibratory, down-the-hole);

B. The number of strikes required to install each pile, or the duration that any vibratory equipment is in use.

(iii) PSO locations during marine mammal monitoring;

(iv) Environmental conditions during monitoring periods (at beginning and end of PSO shift and whenever conditions change significantly), including Beaufort sea state and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance;

(v) Summary of all observations of marine mammals, including:

A. Name and location of PSO who sighted the animal(s), bearing to the sighted animal, means of detection and potentially relevant human activity in the area (including construction activity) at time of sighting;

B. Time of sighting;

C. Identification of the animal(s) (*e.g.,* genus/species, lowest possible taxonomic level, or unidentified), PSO confidence in identification, and the composition of the group if there is a mix of species;

D. Distance and location of each observed marine mammal relative to the pile being driven at the time of each sighting;

E. Estimated number of animals (min/max/best estimate);

F. Estimated number of animals by cohort (adults, juveniles, neonates, group composition, *etc.*);

G. Animal's closest point of approach and estimated time spent within the pre-start clearance and/or shutdown zone;

H. Description of any marine mammal behavioral observations (*e.g.,* observed behaviors such as feeding or traveling), including an assessment of behavioral responses that may be attributable to construction activity (*e.g.,* no response or changes in behavioral state such as ceasing feeding, changing direction, flushing, or breaching);

I. Observations of skin and body condition, including atypical skin or body condition (if any) and potentially identifying marks or other novel physical characteristics.

(vi) Number of marine mammals detected within the harassment zones, by species;

(vii) Detailed information about implementation of any mitigation (*e.g.,* shutdowns and delays), a description of specific actions that ensued, and resulting changes in behavior of the animal(s), if any; and

(viii) An assessment of implementation and effectiveness of prescribed mitigation and monitoring measures.

(d) The Holder must submit all PSO datasheets and/or raw sighting data with the draft report.

(e) Reporting injured or dead marine mammals.

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, the Holder must report the incident to the Office of Protected Resources (OPR), NMFS (*PR.ITP.MonitoringReports@noaa.gov* and *ITP.hotchkin@noaa.gov*) and to the Southeast Region marine mammal stranding network (1–877–433–8299) as soon as is feasible. If the death or injury was clearly caused by the specified activity, the Holder must immediately cease the activity until NMFS OPR reviews the circumstances of the incident determines what, if any, additional measures are appropriate to ensure compliance with the terms of this IHA and notifies the holder of these findings and any additional requirements that must be met prior to re-initiation of the activity.

The report of an injured or dead marine mammal must include the following information:

(i) Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);

(ii) Species identification (if known) or description of the animal(s) involved;

(iii) Condition of the animal(s) (including carcass condition if the animal is dead);

(iv) Observed behaviors of the animal(s), if alive;

(v) If available, photographs or video footage of the animal(s); and

(vi) General circumstances under which the animal was discovered.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.,* intensity, duration), the context of any impacts or responses (*e.g.,* critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the preamble for NMFS' implementing regulations published in the **Federal Register** (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

The BBES stock of bottlenose dolphins is considered a strategic stock because mortality attributable to human activity is thought to exceed PBR. However, potential effects of this project on BBES dolphins are limited to Level B harassment in the form of temporary avoidance of the construction area. As described above, no Level A harassment is expected or authorized. This short duration, low impact construction project includes 25 to 42 non-consecutive days of in-water work spread out across a 3-month period. We expect lower-level acoustic exposures from a dolphin swimming through the comparatively small ensonified zone on a day or two. The Level B harassment zone is about 430 m and the Level A harassment zone is just under 50 m, and the mandatory 50-m monitored shutdown zone is expected to avoid Level A harassment. Given the nature of the harassment, its temporary nature and planned mitigation, NMFS does not expect the take to affect the reproduction or survival of any individuals.

The BBES stock of bottlenose dolphins is also considered a small and resident population, and the Project site is within an identified Biologically Important Area (BIA) for Small and Resident Populations (Lebreque *et al.,* 2015). The BBES stock is present within the area year-round. However, the project area overlaps only a small portion of available habitat and the BIA, and adjacent areas of open water within the embayment will remain accessible to BBES dolphins throughout the construction process. In summary and as described above, the following factors primarily support our determination that the impacts resulting from this activity are not expected to adversely affect BBES bottlenose dolphins by reducing annual rates of recruitment or survival:

- No serious injury or mortality is anticipated or authorized; and no impacts to reproductive success or survival of any individual animals are expected.
- The required mitigation measures are expected to avoid any Level A harassment and to reduce the number and severity of takes by Level B harassment.
- Behavioral impacts and displacement that may occur in response to pile driving are expected to be limited in duration to 25 to 42 days concurrent with the pile-driving activity.
- The pile driving activities do not impact any known important habitat areas such as calving grounds or unique feeding areas, and alternate habitat is readily available.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the planned monitoring and mitigation measures, NMFS finds that the total marine mammal take from the planned pile driving activity will have a negligible impact on BBES bottlenose dolphins.

Small Numbers

As noted previously, only take of small numbers of marine mammals may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock to determine whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one-third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

Based on a conservative estimate of the number of takes that may occur as a result of Columbia's pile driving activities, less than two percent of the BBES population will be subject to take via Level B harassment. This is less than the one-third of the stock abundance and meets the criteria for small numbers described above.

Based on the analysis contained herein of the planned activity (including the planned mitigation and monitoring measures) and the anticipated take of

marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

No subsistence uses of BBES bottlenose dolphins are known to occur. Therefore, NMFS has determined that the total taking of affected species or stocks will not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Section 7(a)(2) of the ESA of 1973 (16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

No incidental take of ESA-listed species is authorized for this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NAO 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS determined that the issuance of the IHA qualified to be categorically excluded from further NEPA review.

Authorization

NMFS has issued an IHA to Columbia Gulf, LLC for the potential harassment of small numbers of marine mammal species incidental to the East Lateral XPRESS project in Barataria Bay, Louisiana, that includes the previously explained mitigation, monitoring, and reporting requirements.

Dated: April 4, 2024.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2024–07565 Filed 4–9–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; North Pacific Observer Safety and Security Survey

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before June 10, 2024.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *NOAA.PRA@noaa.gov.* Please reference OMB Control Number 0648–0759 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Special Agent Jaclyn Smith, NOAA Fisheries Office of Law Enforcement, 222 W 7th Ave. #10, Anchorage, AK 99513, 907–271–1869, or *Jaclyn.Smith@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for an extension and revision of an existing information collection. The revision to the survey instrument will allow the survey participants to specify to whom they reported unwanted behavior. NMFS certified observers are a vital part of fisheries management. Observers deploy to collect fisheries data in the field; observers often deploy to vessels and work alongside fishers for weeks and months at a time. The work environment observers find themselves in can be challenging, especially if the observer finds themselves a target for victim type violations such as sexual harassment, intimidation, or even assault. The NOAA Fisheries Office of Law Enforcement has primary jurisdiction to investigate violations of the Magnuson Stevens Act. The Office of Law Enforcement prioritizes investigations initiated from reports made by observers involving assault, sexual harassment, hostile work environment, intimidation, and other behaviors that may affect observers individually.

However, it is difficult for a person to disclose if they have been a victim of a crime, and if law enforcement does not receive reports of unwanted behavior then they cannot initiate an investigation. The true number of observers who have experienced victim type crimes is unknown, and the reasons why they do not report is also unclear. More information is needed to understand how many observers per year experience victim type crimes, and why they chose not to report to the Office of Law Enforcement.

The Office of law Enforcement, Alaska Division, is conducting a survey of observer who deploy under the North Pacific Observer Program to determine the true number of observers who experienced victimizing behavior during their deployments, and what factors prevented them from reporting. Twenty questions, describing varying levels of behavior that may violate the Magnuson Act, will determine if an observer has experienced the behavior, if they reported the behavior, and to whom the report was made. The survey will assess the specific impediments to disclosure. This survey will launch on an annual basis. The results of the survey will provide the Office of Law Enforcement a better understanding of how often observers are victimized, which will enable them to reallocate resources as needed, conduct more training for observers to ensure they know how to report, conduct training to ensure people understand what constitutes a victim crime, and to increase awareness of potential victimizations. Additionally, the survey results will help law enforcement understand the barriers to disclosure, so

enforcement may begin to address these impediments so they no longer prevent observers from disclosure.

II. Method of Collection

Data will be collected on a voluntary basis, via an electronic survey to ensure anonymity. The survey will be offered to all observers who deployed in the North Pacific Observer Program annually, starting in 2025. Individual data will not be released for public use.

III. Data

OMB Control Number: 0648–0759.

Form Number(s): None.

Type of Review: Regular submission [extension and revision of a current information collection].

Affected Public: Individuals.

Estimated Number of Respondents: 300.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 50 hours.

Estimated Total Annual Cost to Public: $0 in recordkeeping and reporting costs.

Respondent's Obligation: Voluntary.

Legal Authority: Magnuson Stevens Act.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) 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; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2024–07626 Filed 4–9–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Marine Recreational Information Program: Design and Field Test Studies

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before June 10, 2024.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *Adrienne.thomas@noaa.gov.* Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Rob Andrews, Survey Statistician, National Marine Fisheries Service, 1315 East West Hwy, Bldg. SSMC3, Silver Spring, MD 20910–3282, *rob.andrews@noaa.gov,* (302) 827–3226.

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is to initiate a new information collection using a generic clearance to allow the Marine Recreational Information Program (MRIP) to develop, test, and improve its surveys and methodologies. Marine recreational anglers are surveyed to collect catch and effort data, fish biology data, and angler socioeconomic characteristics. These data are required to carry out provisions of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), as amended, regarding conservation and management of fishery resources.

Marine recreational fishing catch and effort data are collected through a combination of mail surveys, telephone surveys and on-site intercept surveys with recreational anglers. The procedures utilized to this effect will include but are not limited to experiments with levels of incentives for various types of survey operations, focus groups, cognitive laboratory activities, pilot testing, exploratory interviews, experiments with questionnaire design, and usability testing of electronic data collection instruments.

II. Method of Collection

Information will be collected through self-administered mail surveys, face-to-face interviews, focus groups, telephone surveys and online web surveys.

III. Data

OMB Control Number: 0648–XXXX.

Form Number(s): None.

Type of Review: Regular submission [new information collection].

Affected Public: Individuals or households.

Estimated Number of Respondents: 46,000.

Estimated Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 4,375 hours.

Estimated Total Annual Cost to Public: 0.

Respondent's Obligation: Voluntary.

Legal Authority: Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) 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; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to

be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2024–07627 Filed 4–9–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Weather Modification Activities Reports

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on 2 January 2024 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic & Atmospheric Administration, Commerce.

Title: Weather Modification Activities Reports.

OMB Control Number: 0648–0025.

Form Number(s): NOAA Forms 17–4 and 17–4A.

Type of Request: Regular submission (extension of a current information collection).

Number of Respondents: 30.

Average Hours per Response: 60 minutes per initial report; approximately 10 cases involve interim reports; 30 minutes per interim or final report.

Total Annual Burden Hours: 50 hours.

Needs and Uses: The National Oceanic & Atmospheric Administration's Office of Atmospheric Research (OAR)/Weather Program Office is conducting this information collection pursuant to section 6(b) of Public Law 92–205. This law requires that all non-Federal weather modification activities (*e.g.,* cloud seeding) in the United States (U.S.) and its territories be reported to the Secretary of Commerce through NOAA. This reporting is critical for gauging the scope of these activities, for determining the possibility of duplicative operations or of interference with another project, for providing a database for checking atmospheric changes against the reported activities, and for providing a single source of information on the safety and environmental factors used in weather modification activities in the U.S. Two forms are collected under this OMB Control Number: one prior to and one after the activity. The requirements are detailed in 15 CFR part 908. This data is used for scientific research, historical statistics, international reports and other purposes.

Affected Public: Business or other for-profit organizations.

Frequency: On occasion (Beginning and end of projects).

Respondent's Obligation: Mandatory.

Legal Authority: Public Law 92–205, Weather Modification Reporting Act of 1972.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0648–0025.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2024–07583 Filed 4–9–24; 8:45 am]

BILLING CODE 3510–KD–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Uniform Formulary Beneficiary Advisory Panel; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Personnel and Readiness, 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 Uniform Formulary Beneficiary Advisory Panel (UFBAP) was held on Wednesday, April 3, 2024.

DATES: Open to the public Wednesday, April 3, 2024, from 10:00 a.m. to 1:00 p.m. eastern standard time.

ADDRESSES: The meeting was held telephonically or via conference call. The phone number for the remote access on April 3, 2024, was CONUS: 1–888–831–4306; OCONUS: 1–210–234–8694; PARTICIPANT CODE: 9136304.

These numbers and the dial-in instructions were posted on the UFBAP website at: *https://www.health.mil/Military-Health-Topics/Access-Cost-Quality-and-Safety/Pharmacy-Operations/BAP.*

FOR FURTHER INFORMATION CONTACT: Designated Federal Officer (DFO) Colonel (COL) Paul B. Carby, USA, 703–681–2890 (voice), *dha.ncr.j-6.mbx.baprequests@health.mil* (email). Mailing address is 7700 Arlington Boulevard, Suite 5101, Falls Church, VA 22042–5101. Website: *https://www.health.mil/Military-Health-Topics/Access-Cost-Quality-and-Safety/Pharmacy-Operations/BAP.* The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: Due to circumstances beyond the control of the DFO, the UFBAP was unable to provide public notification required by 41 CFR 102–3.150(a) concerning its April 3, 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.

This meeting was 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 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: The UFBAP reviewed and commented on recommendations made by the Pharmacy and Therapeutics Committee to the Director, Defense Health Agency regarding the Uniform Formulary.

Agenda:

1. 10:00 a.m.–10:10 a.m. Sign In for UFBAP members
2. 10:10 a.m.–10:40 a.m. Welcome and Opening Remarks
   a. Welcome, Opening Remarks, and Introduction of UFBAP Members by COL Paul B. Carby, DFO, UFBAP
   b. Public Written Comments by COL Paul B. Carby, DFO, UFBAP
   c. Opening Remarks by Mr. Jon Ostrowski, UFBAP Chair
   d. Introductory Remarks by Dr. Edward Vonberg, Chief, Formulary Management Branch
3. 10:40 a.m.–11:45 a.m. Scheduled Therapeutic Class Reviews
4. 11:45 a.m.–12:30 p.m. Newly Approved Drugs Review
5. 12:30 p.m.–12:45 p.m. Pertinent Utilization Management Issues
6. 12:45 p.m.–1:00 p.m. Closing remarks
   a. Closing Remarks by UFBAP Co-Chair
   b. Closing Remarks by DFO, UFBAP

Meeting Accessibility: Pursuant to 5 U.S.C. 1009(a)(1) and 41 CFR 102–3.140 through 102–3.165, and subject to the availability of phone lines, this meeting was open to the public. Telephone lines were limited and available to the first 220 people dialing in. There were 220 lines total: 200 domestic and 20 international, including leader lines.

Written Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140(c), and 5 U.S.C. 1009(a)(3), interested persons or organizations may submit written statements to the UFBAP about its mission and/or the agenda to be addressed in this public meeting. Written statements should be submitted to the UFBAP's DFO. The DFO's contact information can be found in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Written comments or statements must be received by the UFBAP's DFO so they may be made available to the UFBAP for its consideration. Written comments received are releasable to the public. The DFO will review all submitted written statements and provide copies to UFBAP.

Dated: April 3, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024–07521 Filed 4–9–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2024–SCC–0056]

Agency Information Collection Activities; Comment Request; Assurance of Compliance—Civil Rights Certificate

AGENCY: Office for Civil Rights (OCR), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before June 10, 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–0056. 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 Elizabeth Wiegman, (202) 987–1347.

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: Assurance of Compliance—Civil Rights Certificate.

OMB Control Number: 1870–0503.

Type of Review: Extension without change of a currently approved ICR.

Respondents/Affected Public: State, Local, and Tribal Governments; Private Sector.

Total Estimated Number of Annual Responses: 25.

Total Estimated Number of Annual Burden Hours: 8.

Abstract: The Office for Civil Rights (OCR) has enforcement responsibilities under several civil rights laws, including title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and the Boy Scouts of America Equal Access Act. To meet these responsibilities, OCR collects assurances of compliance from applicants for Federal financial assistance from, and applicants for funds made available through, the Department of Education, as required by regulations. These entities include, for example, State educational agencies, local education agencies, and postsecondary educational institutions. If a recipient violates one or more of these civil rights laws, OCR and the Department of Justice can use the signed assurances of compliance in an enforcement proceeding.

Dated: April 5, 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. 2024–07606 Filed 4–9–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2024–SCC–0055]

Agency Information Collection Activities; Comment Request; Pell Grant Reporting Under the Common Origination and Disbursement (COD) System

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before June 10, 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–0055. 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 Beth Grebeldinger, (202) 377–4018.

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: Pell Grant Reporting under the Common Origination and Disbursement (COD) System.

OMB Control Number: 1845–0039.

Type of Review: Extension without change of a currently approved ICR.

Respondents/Affected Public: Private Sector; State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 5,909,584.

Total Estimated Number of Annual Burden Hours: 413,671.

Abstract: The Federal Pell Grant (Pell Grant) program is a student financial assistance program authorized under the Higher Education Act of 1965, as amended (HEA). The program provides grant assistance to an eligible student attending an institution of higher education. The institution determines the students award and disburses program funds on behalf of the Department of Education (the Department). Institutions are required to report student Pell Grant payment information to the Department electronically. Electronic reporting is conducted through the Common Origination and Disbursement (COD) system. The COD system is used by institutions to request, report, and reconcile grant funds received from the Pell Grant program. The Department uses the information collected in the COD system to aid in ensuring compliance with fiscal and administrative requirements under the HEA for the Pell Grant program and under 34 CFR 690 for the Pell Grant program regulations. This is a request for an extension of the current information collection.

Dated: April 4, 2024.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2024–07566 Filed 4–9–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–1676–000]

MEMS Industrial Supply 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 MEMS Industrial Supply 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 April 23, 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: April 3, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–07558 Filed 4–9–24; 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 exempt wholesale generator filings:

Docket Numbers: EG24–159–000.

Applicants: Carvers Creek LLC.

Description: Carvers Creek LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 4/3/24.

Accession Number: 20240403–5037.

Comment Date: 5 p.m. ET 4/24/24

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–1436–019; ER18–280–008; ER18–533–006; ER18–534–006; ER18–535–006; ER18–536–006; ER18–537–006; ER18–538–007; ER11–4266–000; ER22–48–004.

Applicants: Gridflex Generation, LLC, Richland-Stryker Generation LLC, Sidney, LLC, Monument Generating Station, LLC, O.H. Hutchings CT, LLC, Yankee Street, LLC, Montpelier Generating Station, LLC, Tait Electric Generating Station, LLC, Lee County Generating Station, LLC, Eagle Point Power Generation LLC.

Description: Notice of Non-Material Change in Status of Eagle Point Power Generation LLC, et al.

Filed Date: 4/1/24.

Accession Number: 20240401–5684.

Comment Date: 5 p.m. ET 4/22/24.

Docket Numbers: ER22–2931–001.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Amendment to ISA No. 6612 & ICSA No. 6613, AC1–190 to be effective 5/20/2024.

Filed Date: 4/2/24.

Accession Number: 20240402–5225.

Comment Date: 5 p.m. ET 4/23/24.

Docket Numbers: ER24–333–000; ER24–334–000.

Applicants: Oak Lessee, LLC, Oak Solar, LLC.

Description: Second Supplement to November 3, 2023 Oak Solar, LLC et al., tariff filing.

Filed Date: 4/1/24.

Accession Number: 20240401–5677.

Comment Date: 5 p.m. ET 4/11/24.

Docket Numbers: ER24–824–002.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: Tariff Amendment: Alabama Power Company submits tariff filing per 35.17(b): Camellia Solar (Camellia II) LGIA Deficiency Response to be effective 12/21/2023.

Filed Date: 4/3/24.

Accession Number: 20240403–5109.

Comment Date: 5 p.m. ET 4/24/24.

Docket Numbers: ER24–1656–000; ER24–1657–000.

Applicants: McNair Creek Hydro Limited Partnership, Furry Creek Power Ltd.

Description: Supplement 03/29/2024 Furry Creek Power Ltd., et al. tariff filing.

Filed Date: 4/1/24.

Accession Number: 20240401–5682.

Comment Date: 5 p.m. ET 4/22/24.

Docket Numbers: ER24–1683–000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Notice of Cancellation of CSA, SA No. 4494; Queue No. AA2–060/AA2–061 to be effective 2/14/2024.

Filed Date: 4/3/24.

Accession Number: 20240403–5048.

Comment Date: 5 p.m. ET 4/24/24.

Docket Numbers: ER24–1684–000.

Applicants: PJM Interconnection, L.L.C.

Description: 205(d) Rate Filing: NSA, Service Agreement No. 7228; AB1–124 to be effective 6/3/2024.

Filed Date: 4/3/24.

Accession Number: 20240403–5049.

Comment Date: 5 p.m. ET 4/24/24.

Docket Numbers: ER24–1685–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: 205(d) Rate Filing: 2024–04–03_SA 4081 Duke Energy-Brouilletts Creek Solar 1st Rev GIA (J1348) to be effective 3/25/2024.

Filed Date: 4/3/24.

Accession Number: 20240403–5059.

Comment Date: 5 p.m. ET 4/24/24.

Docket Numbers: ER24–1686–000.

Applicants: PJM Interconnection, L.L.C.

Description: 205(d) Rate Filing: Original NSA SA No. 7227, Queue No. AB1–125 to be effective 6/3/2024.

Filed Date: 4/3/24.

Accession Number: 20240403–5065.

Comment Date: 5 p.m. ET 4/24/24.

Docket Numbers: ER24–1687–000.

Applicants: Carvers Creek LLC.

Description: Baseline eTariff Filing: Application for MBR Authorization with Waivers & Expedited Treatment to be effective 4/4/2024.

Filed Date: 4/3/24.

Accession Number: 20240403–5072.

Comment Date: 5 p.m. ET 4/24/24.

Docket Numbers: ER24–1688–000.

Applicants: Southern California Edison Company.

Description: 205(d) Rate Filing: First Amend IA, Ten West Link 500 kV Transmission Line (TOT784/RS FERC No. 532) to be effective 4/4/2024.

Filed Date: 4/3/24.

Accession Number: 20240403–5080.

Comment Date: 5 p.m. ET 4/24/24.

Docket Numbers: ER24–1689–000.

Applicants: Tucson Electric Power Company.

Description: 205(d) Rate Filing: Provisional Large Generator

Interconnection Agreement (S.A. 545) to be effective 4/4/2024.

Filed Date: 4/3/24.

Accession Number: 20240403–5089.

Comment Date: 5 p.m. ET 4/24/24.

Docket Numbers: ER24–1690–000.

Applicants: CPV Backbone Solar, LLC.

Description: 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 6/3/2024.

Filed Date: 4/3/24.

Accession Number: 20240403–5143.

Comment Date: 5 p.m. ET 4/24/24.

Docket Numbers: ER24–1691–000.

Applicants: AEP Texas Inc.

Description: 205(d) Rate Filing: AEPTX-Great Kiskadee Storage 1st Amended Generation Interconnection Agreement to be effective 3/14/2024.

Filed Date: 4/3/24.

Accession Number: 20240403–5162.

Comment Date: 5 p.m. ET 4/24/24.

Docket Numbers: ER24–1692–000.

Applicants: PJM Interconnection, L.L.C.

Description: 205(d) Rate Filing: Amended WMPA, Service Agreement No. 6470; AG1–198 to be effective 6/3/2024.

Filed Date: 4/3/24.

Accession Number: 20240403–5164.

Comment Date: 5 p.m. ET 4/24/24.

Docket Numbers: ER24–1693–000.

Applicants: AEP Texas Inc.

Description: 205(d) Rate Filing: AEPTX-Pintail Pass BESS 1st Amended Generation Interconnection Agreement to be effective 3/20/2024.

Filed Date: 4/3/24.

Accession Number: 20240403–5173.

Comment Date: 5 p.m. ET 4/24/24.

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 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

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Dated: April 3, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–07556 Filed 4–9–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–1695–000]

Groton BESS 2 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 Groton BESS 2 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 April 24, 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.

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Dated: April 4, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–07595 Filed 4–9–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 9709–071]

ECOsponsible, LLC; Soliciting Notices of Intent To File a New License Application and Pre-Application Documents

The current license for the Herkimer Hydroelectric Project No. 9709 was issued to the original licensee, Trafalgar Power, Inc., on April 22, 1987, for a term of 40 years, ending March 31, 2027.[1] The project has fallen into disrepair and has not operated since 2006. The license was transferred to the current licensee, ECOsponsible, LLC, (ECOsponsible) on March 12, 2015.[2] The 1,680-kilowatt (kW) project is located on West Canada Creek in Herkimer County, New York.

The project works consist of: (1) a timber crib dam with: (a) a 9-foot-high, 95-foot-long section with a crest elevation of 420.0 feet mean sea level (msl) and (b) a 12-foot-high, 145-foot-long section with a crest elevation of 419.2 feet msl; (2) an impoundment with a surface area of 19 acres, a storage capacity of 163 acre-feet, and a normal water surface elevation of 420.5 feet msl; (3) timber flashboards; (4) an intake structure; (5) a reinforced concrete and steel powerhouse containing four turbine-generating units with a capacity of 400 kW each and an 80-kW minimum flow generator for a total installed capacity of 1,680 kW; (6) a 50-foot-long, 13.2-kilovolt transmission line; and (7) appurtenant facilities.

At least five years before the expiration of a license for a major water power project subject to sections 14 and 15 of the Federal Power Act, the Commission's regulations require the license applicant to file with the Commission a notice of intent (NOI) that contains an unequivocal statement of the licensee's intention to file or not to file an application for a new license, details on the principal project works and installed plant capacity, and other information.[3] Accordingly, NOIs for the Herkimer Project were due by March 31, 2022. On March 9, 2022, Stone Ridge Hydro, LLC, filed an NOI to file an application for a small hydropower project exemption for the Herkimer Project, which was rejected on May 17, 2022.[4] On March 31, 2022, Mr. Dennis Ryan, Jr. filed an NOI to file a relicense application for the Herkimer Project, which Commission staff is rejecting in an order issued in conjunction with this notice.[5]

Because all timely-filed NOIs have been rejected, the Commission is soliciting applications from applicants other than the existing licensee. An existing licensee that fails to timely file an NOI is prohibited from filing an application for a new license or exemption for the project, either individually or in conjunction with an entity or entities that are not currently licensees.[6]

Any party interested in filing a license application for the project must first file an NOI[7] and PAD[8] pursuant to part 5 of the Commission's regulations. Although the integrated licensing process (ILP) is the default pre-filing process, section 5.3(b) of the Commission's regulations allows a potential license applicant to request to use the traditional licensing process or alternative procedures when it files its NOI.[9]

This notice sets a deadline of 90 days from the date of this notice for interested applicants, other than the existing licensee, to file NOIs, PADs, and requests to use the traditional licensing process or alternative procedures. Applications for a new license from potential (non-licensee) applicants must be filed with the Commission at least 24 months prior to the expiration of the current license.[10] Because the current license expires on March 31, 2027, applications for a license for this project must be filed by March 31, 2025.

Questions concerning this notice should be directed to Jody Callihan at (202) 502–8278 or *jody.callihan@ferc.gov.*

Dated: April 3, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–07552 Filed 4–9–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–1694–000]

Groton BESS 1 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 Groton BESS 1 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 April 24, 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,

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[1] *Trafalgar Power, Inc.,* 39 FERC ¶ 62,077 (1987). The original license was for a minor project with an authorized installed capacity of 1,050 kilowatts (kW). In 1988 Trafalgar Power applied to amend its license to increase the authorized installed capacity of the Herkimer Project to 1,680 kW. The increase caused the project to be redefined as a major project. *Trafalgar Power, Inc.,* 48 FERC ¶ 62,105 (1989).

[2] *Trafalgar Power, Inc.,* 150 FERC ¶ 62,144 (2015).

[3] 18 CFR 5.5(d) (2023); *id.* at 16.6(b–c); *see also* 16 U.S.C. 808(b)(1) (''Each existing licensee shall notify the Commission whether the licensee intends to file an application for a new license or not. Such notice shall be submitted at least 5 years before the expiration of the existing license.

[4] Division of Hydropower Licensing May 17, 2022 Rejection of Notice of Intent. The Commission's regulations state that if there is an unexpired license in effect for a project, the Commission will accept an application for exemption only if the exemption applicant is the licensee. 18 CFR 4.33(d)(ii) (2023); *see also Stone Ridge Hydro, LLC,* 180 FERC ¶ 61,123 (2022).

[5] *See* Division of Hydropower Licensing April 2, 2024 Order Rejecting Notice of Intent and Pre-Application Document. Commission staff finds: (1) Mr. Ryan, Jr. failed to demonstrate that the existing licensee filed the NOI, (2) the entity that filed the NOI was not a valid business entity at the time of filing, and (3) Mr. Ryan, Jr. was not authorized to act for the entity that filed the NOI.

[6] 18 CFR 16.24(a)(1) (2023); *see also id.* 16.23(a) (deeming failure to file an NOI as the same as filing an NOI indicating an intention not to file an application for a new license.). Note that this prohibition extends only to the existing licensee.

[7] 18 CFR 5.5 (2023).

[8] 18 CFR 5.6.

[9] 18 CFR 5.3(b).

[10] 18 CFR 16.9(b)(1).

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.

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Dated: April 4, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–07596 Filed 4–9–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Effectiveness of Exempt Wholesale Generator Status

	Docket Nos.
Atrisco Solar LLC	EG24–64–000
Atrisco Energy Storage LLC.	EG24–65–000
Quail Ranch Solar LLC	EG24–66–000
Quail Ranch Energy Storage LLC.	EG24–67–000
Atrisco Solar SF LLC	EG24–68–000
Atrisco BESS SF LLC	EG24–69–000
Quail Ranch Solar SF LLC	EG24–70–000
Quail Ranch BESS SF LLC	EG24–71–000
Alton Post Office Solar, LLC.	EG24–72–000
Foxglove Solar Project, LLC.	EG24–73–000
Brazos Bend BESS LLC	EG24–74–000
RB Inyokern Solar WDAT 1203 LLC.	EG24–75–000
RB Inyokern Solar WDAT 1281 LLC.	EG24–76–000
Kupono Solar, LLC	EG24–77–000
Sunlight Road Solar, L.L.C	EG24–78–000
Bristol BESS, LLC	EG24–79–000
Morgan Energy Center, LLC.	EG24–80–000
Decatur Solar Energy Center, LLC.	EG24–81–000
Washington County Solar, LLC.	EG24–82–000
Davis UP Energy Storage LLC.	EG24–83–000
Frederick Energy Storage LLC.	EG24–84–000
Bromley Energy Storage LLC.	EG24–85–000
Keenesburg Energy Storage LLC.	EG24–86–000
Mead Energy Storage LLC	EG24–87–000
Parkway Energy Storage LLC.	EG24–88–000
Platte Valley Energy Storage LLC.	EG24–89–000
Rattlesnake Ridge Energy Storage LLC.	EG24–90–000
Monte Cristo Windpower, LLC.	EG24–91–000
Wadley Solar, LLC	EG24–92–000
AE-Telview ESS, LLC	EG24–93–000
Texas Waves, LLC	EG24–94–000
Altona Solar, LLC	EG24–95–000
BCD 2024 Fund 2 Lessee, LLC.	EG24–96–000
Serrano Solar, LLC	EG24–97–000
Three Rivers District Energy, LLC.	EG24–98–000
Great Kiskadee Storage, LLC.	EG24–99–000

Take notice that during the month of March 2024, the status of the above-captioned entities as Exempt Wholesale Generators became effective by operation of the Commission's regulations. 18 CFR 366.7(a) (2023).

Dated: April 3, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–07560 Filed 4–9–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP24–653–000.

Applicants: Sprague Operating Resources LLC, Energo Power & Gas LLC.

Description: Joint Petition for Limited Waivers of Capacity Release Regulations, et al. of Sprague Operating Resources LLC, et al.

Filed Date: 4/3/24.

Accession Number: 20240403–5092.

Comment Date: 5 p.m. ET 4/15/24.

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 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP24–611–001.

Applicants: Pine Needle LNG Company, LLC.

Description: Tariff Amendment: Amended Annual Fuel and Electric Power Tracker Filing to be effective 5/1/2024.

Filed Date: 4/3/24.

Accession Number: 20240403–5073.

Comment Date: 5 p.m. ET 4/15/24.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

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Dated: April 3, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–07557 Filed 4–9–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–1679–000]

Eden 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 Eden 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 April 23, 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: April 3, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–07555 Filed 4–9–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–1687–000]

Carvers Creek 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 Carvers Creek 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 April 24, 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.

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contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: April 4, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–07597 Filed 4–9–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–1696–000]

Holden BESS 1 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 Holden BESS 1 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 April 24, 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: April 4, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–07594 Filed 4–9–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: PR24–63–000.

Applicants: Impulsora Pipeline, LLC.

Description: Compliance 2024 to be effective N/A.

Filed Date: 4/3/24.

Accession Number: 20240403–5167.

Comment Date: 5 p.m. ET 4/24/24.

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 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP24–501–001.

Applicants: Ozark Gas Transmission, L.L.C.

Description: Compliance filing: Ozark Gas Transmission Amended NCA Filing to be effective 4/1/2024.

Filed Date: 4/4/24.

Accession Number: 20240404–5072.

Comment Date: 5 p.m. ET 4/16/24.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

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: April 4, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–07598 Filed 4–9–24; 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: EC24–56–000.

Applicants: Burgess Biopower, LLC, North Country Generation Holdings LLC.

Description: Supplement to March 5, 2024 Joint Application for Authorization Under Section 203 of the Federal Power Act of Burgess BioPower, LLC, et al.

Filed Date: 4/3/24.

Accession Number: 20240403–5207.

Comment Date: 5 p.m. ET 4/15/24.

Docket Numbers: EC24–66–000.

Applicants: Bellflower Solar 1, LLC, Bighorn Solar 1, LLC, Black Bear Alabama Solar 1, LLC, Black Bear Alabama Solar Tenant, LLC, Cottontail Solar 2, LLC, Cottontail Solar 8, LLC, Happy Solar 1, LLC, Honeysuckle Solar, LLC, Oxbow Solar Farm 1, LLC, Sun Mountain Solar 1, LLC.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Bellflower Solar 1, LLC, et al.

Filed Date: 4/3/24.

Accession Number: 20240403–5210.

Comment Date: 5 p.m. ET 4/24/24.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER24–311–001.

Applicants: Condor Energy Storage, LLC.

Description: Notice of Non-Material Change in Status of Condor Energy Storage, LLC.

Filed Date: 4/3/24.

Accession Number: 20240403–5206.

Comment Date: 5 p.m. ET 4/24/24.

Docket Numbers: ER24–377–002.

Applicants: Devon Energy Production Company, LP.

Description: Tariff Amendment: DEPC MBR Second Response Letter to be effective 12/26/2023.

Filed Date: 4/4/24.

Accession Number: 20240404–5137.

Comment Date: 5 p.m. ET 4/25/24.

Docket Numbers: ER24–842–001.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: Tariff Amendment: Alabama Power Company submits tariff filing per 35.17(b): Yellowhammer Renewable Energy (Yellowhammer Solar) LGIA Deficiency Response to be effective 12/27/2023.

Filed Date: 4/4/24.

Accession Number: 20240404–5085.

Comment Date: 5 p.m. ET 4/25/24.

Docket Numbers: ER24–1682–000.

Applicants: Eagle Point Power Generation LLC.

Description: Eagle Point Power Generation LLC requests a one-time, limited waiver of the 90-day prior notice requirement set forth in Schedule 2 of the PJM Tariff.

Filed Date: 3/29/24.

Accession Number: 20240329–5497.

Comment Date: 5 p.m. ET 4/19/24.

Docket Numbers: ER24–1694–000

Applicants: Groton BESS 1 LLC.

Description: Baseline eTariff Filing: Groton BESS 1 LLC MBR Tariff to be effective 5/1/2024.

Filed Date: 4/3/24.

Accession Number: 20240403–5196.

Comment Date: 5 p.m. ET 4/24/24.

Docket Numbers: ER24–1695–000.

Applicants: Groton BESS 2 LLC.

Description: Baseline eTariff Filing: Groton BESS 2 LLC MBR Tariff to be effective 5/1/2024.

Filed Date: 4/3/24.

Accession Number: 20240403–5197.

Comment Date: 5 p.m. ET 4/24/24.

Docket Numbers: ER24–1696–000.

Applicants: Holden BESS 1 LLC.

Description: Baseline eTariff Filing: Holden BESS 1 LLC MBR Tariff to be effective 5/1/2024.

Filed Date: 4/3/24.

Accession Number: 20240403–5200.

Comment Date: 5 p.m. ET 4/24/24.

Docket Numbers: ER24–1697–000.

Applicants: AES Westwing II ES, LLC.

Description: Baseline eTariff Filing: AES Westwing II ES, LLC MBR Tariff to be effective 4/5/2024.

Filed Date: 4/4/24.

Accession Number: 20240404–5067.

Comment Date: 5 p.m. ET 4/25/24.

Docket Numbers: ER24–1698–000.

Applicants: AES ES Alamitos 2, LLC.

Description: Baseline eTariff Filing: AES ES Alamitos 2, LLC MBR Tariff to be effective 4/5/2024.

Filed Date: 4/4/24.

Accession Number: 20240404–5068.

Comment Date: 5 p.m. ET 4/25/24.

Docket Numbers: ER24–1699–000.

Applicants: PJM Interconnection, L.L.C.

Description: 205(d) Rate Filing: Amendment to WMPA No. 6426 AD1–105 (AA_MCD) to be effective 6/4/2024.

Filed Date: 4/4/24.

Accession Number: 20240404–5070.

Comment Date: 5 p.m. ET 4/25/24.

Docket Numbers: ER24–1700–000.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii): EDF Renewables (Rock House Solar) LGIA Amendment Filing to be effective 3/22/2024.

Filed Date: 4/4/24.

Accession Number: 20240404–5090.

Comment Date: 5 p.m. ET 4/25/24.

Docket Numbers: ER24–1701–000.

Applicants: California Independent System Operator Corporation.

Description: 205(d) Rate Filing: 2024–04–04 Revision to TCA—Adding DCR Transmission to be effective 6/5/2024.

Filed Date: 4/4/24.

Accession Number: 20240404–5095.

Comment Date: 5 p.m. ET 4/25/24.

Docket Numbers: R24–1702–000.

Applicants: PJM Interconnection, L.L.C.

Description: 205(d) Rate Filing: Original ISA, Service Agreement No. 7200; AF1–114 to be effective 3/5/2024.

Filed Date: 4/4/24.

Accession Number: 20240404–5108.

Comment Date: 5 p.m. ET 4/25/24.

Docket Numbers: ER24–1703–000.

Applicants: Entergy Mississippi, LLC.

Description: 205(d) Rate Filing: Harvest Gold Solar, LLC, LBA Agreement to be effective 4/5/2024.

Filed Date: 4/4/24.

Accession Number: 20240404–5149.

Comment Date: 5 pm ET 4/25/24.

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 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

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Dated: April 4, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–07599 Filed 4–9–24; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2023–0111; FRL–11864–01–OMS]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; NSPS for Asphalt Processing and Roofing Manufacture (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NSPS for Asphalt Processing and Roofing Manufacture (EPA ICR Number 0661.14, OMB Control Number 2060–0002), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through April 30, 2024. Public comments were previously requested via the **Federal Register** on May 18, 2023, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

DATES: Comments may be submitted on or before May 10, 2024.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2023–0111, to EPA online using *www.regulations.gov/* (our preferred method), by email to *a-and-r-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *http://www.reginfo.gov/public/do/PRAMain.* Find this specific information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Muntasir Ali, Sector Policies and Program Division (D243–05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–0833; email address: *ali.muntasir@epa.gov.*

SUPPLEMENTARY INFORMATION: This is a proposed extension of the ICR, which is currently approved through April 30, 2024. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Public comments were previously requested in the **Federal Register** on May 18, 2023, during a 60-Day comment period (88 FR 31748). This notice allows for an additional 30 days for public comments. Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov,* or in person at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: The New Source Performance Standards (NSPS) for Asphalt Processing and Roofing Manufacture (40 CFR part 60, subpart UU) were promulgated on August 6, 1982, and most-recently amended on February 27, 2014. These regulations apply to both existing and new saturators and mineral handling and asphalt storage facilities at asphalt roofing manufacturing plants and to asphalt storage tanks and blowing stills at asphalt processing plants, petroleum refineries, and asphalt roofing plants. New facilities include those that commenced construction, modification, or reconstruction after the date of proposal. This information is being collected to assure compliance with 40 CFR part 60, subpart UU.

Form Numbers: None.

Respondents/affected entities: Asphalt processing and asphalt roofing manufacture facilities.

Respondent's obligation to respond: Mandatory (40 CFR 60, Subpart UU).

Estimated number of respondents: 144 (total).

Frequency of response: Initially and semiannually.

Total estimated burden: 34,100 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $11,700,000 (per year), which includes $7,430,000 in annualized capital//startup and/or operation & maintenance costs.

Changes in the estimates: There is no change in burden from the most recently approved ICR as currently identified in the OMB Inventory of Approved Burdens. This is due to two considerations: (1) the regulations have not changed over the past three years and are not anticipated to change over the next three years; and (2) the growth rate for this industry is very low or non-existent, so there is no significant change in the overall burden. There is a slight increase in costs, which is wholly due to the use of updated labor rates. There is an increase in capital/startup and/or operation & maintenance costs due to an adjustment to increase from 2008 to 2022 dollars using the CEPCI Equipment Cost Index.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2024–07625 Filed 4–9–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–11562–01–R6]

Notice of Proposed Administrative Settlement Agreement and Order on Consent for Recovery of Past Response Costs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement; request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), notice is hereby given that a proposed CERCLA Section 122(h)(1) Cashout Settlement Agreement for Past Response Costs by Settling Parties (''Proposed Agreement'') associated with the Chemical Recycling Inc., Superfund Site in Wylie, Collin County, Texas (''Site'') was executed by the Environmental Protection Agency (''EPA'') and is now subject to public comment, after which EPA may modify or withdraw its consent if comments received disclose facts or considerations that indicate that the Proposed Agreement is inappropriate, improper, or inadequate.

DATES: Comments must be received on or before May 10, 2024.

ADDRESSES: As a result of impacts related to the COVID–19 pandemic, requests for documents and submission of comments must be via electronic mail except as provided below. The Proposed Agreement and additional background information relating to the Proposed Agreement are available for public inspection upon request by contacting EPA Assistant Regional Counsel Edwin Quinones at *quinones.edwin@epa.gov.* Comments must be submitted via electronic mail to this same email address and should reference the ''Chemical Recycling, Inc.'' Superfund Site, Proposed Settlement Agreement'' and ''EPA CERCLA Docket No. 06–07–23''. Persons without access to electronic mail may call Mr. Quinones at (214) 665–8035 to make alternative arrangements.

FOR FURTHER INFORMATION CONTACT: Edwin Quinones at EPA by phone (214) 665–8035 or email at: *quinones.edwin@epa.gov.*

SUPPLEMENTARY INFORMATION: The Proposed Agreement would resolve potential EPA claims under section 107(a) of CERCLA, against The Sherwin Williams Company, Western Extrusions Corp., IMO Industries, Inc., Micro Quality Semiconductor, Inc. (and its affiliates Microsemi Corporation and Microchip Technology Incorporated), Akzo Nobel Coatings Inc., and 7-Eleven Inc. (''Settling Parties'') for EPA response costs at the Chemical Recycling Inc., Superfund Site located in Wylie, Texas. The settlement requires Settling Parties to pay the EPA $650,000, plus an additional sum for Interest on that amount calculated beginning the 61st day after the Effective Date through the date of payment, for EPA response costs. For thirty (30) days following the date of publication of this notice, EPA will receive electronic comments relating to the Proposed Agreement. EPA's response to any comments received will be available for public inspection by request. Please see the **ADDRESSES** section of this notice for special instructions in effect due to impacts related to the COVID–19 pandemic.

Earthea Nance,

Regional Administrator, Region 6.

[FR Doc. 2024–07589 Filed 4–9–24; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

Notice for the Request of Applications: 2024–2025 EXIM Advisory Committees and Councils

Time and Date: Monday, April 1–Friday, April 26, 2024.

Status: The Export-Import Bank of the United States (EXIM) is accepting applications for the 2023–2024 EXIM Advisory Committee, Sub-Saharan Africa Advisory Committee, Council on Climate and Energy Transition, Council on China Competition, Council on Small Business, and Council on Advancing Women in Business from April 1–April 26, 2024.

Candidates wishing to be considered for membership must submit an application *https://www.exim.gov/leadership-governance/advisory-committees* and include the following:

- Biography
- Headshot
- Statement of interest showing relevant knowledge, experience, and qualifications (500 words max)

Completed application materials must be submitted by 5:30 p.m. EDT, April 26, 2024.

Advisory Committee

The Advisory Committee provides guidance to EXIM on its policies and programs, in particular on the extent to which EXIM provides competitive financing to support American jobs through exports.

Sub-Saharan Africa Advisory Committee

The Sub-Saharan Africa Advisory Committee provides advice on EXIM policies and programs designed to support the expansion of financing support for U.S. manufactured goods and services in Sub-Saharan Africa.

Council on Climate and Energy Transition

This council advises how EXIM can further support U.S. exporters in clean energy, deal pipeline development and to meet congressional mandates to support environmentally beneficial renewable energy, energy efficiency, and energy storage exports.

Council on China Competition

The Council on China Competition offers guidance on advancing the comparative leadership of the United States with respect to China and supporting U.S. innovation and employment through competitive export finance.

Council on Small Business

The Council on Small Business provides recommendations to help more American small business exporters find new markets, achieve more sales, and lower the risk of selling internationally.

Council on Advancing Women in Business

The Council on Advancing Women in Business advises how EXIM can reach more women business leaders and owners and better consider equity goals set in the agency's strategy.

Contact Person for More Information

For more information about applying for membership to any of the committees, please contact India Walker at *advisory@exim.gov.*

SUPPLEMENTARY INFORMATION: The Advisory Committee has been established as directed by Section 3(d) of the Export- Import Bank Act of 1945 (the ''Act''), 12 U.S.C. 635a(d)(1)(A). This Advisory Committee is chartered in accordance with the Federal Advisory Committee Act (''FACA''), 5 U.S.C. App.

Lin Zhou,

IT Specialist.

[FR Doc. 2024–07176 Filed 4–9–24; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Request for Candidates To Serve as Non-Federal Members of the Federal Accounting Standards Advisory Board

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) is currently seeking candidates (candidates must not currently be Federal employees) to serve as non-Federal members of FASAB. One new member will be selected to serve a five-year term beginning November 1, 2024. Two new members will be selected to serve five-year terms beginning January 1, 2026, after the terms of two current non-federal Board members end.

DATES: Please submit your resume by May 17, 2024, to be considered for the position starting on November 1, 2024. Please submit your resume by October 31, 2024, to be considered for the positions starting on January 1, 2026.

ADDRESSES: Responses may be sent to *fasab@fasab.gov* or Ms. Monica R.

Valentine, Executive Director, 441 G Street NW, Suite 1155, Washington, DC 20548.

FOR FURTHER INFORMATION CONTACT: Ms. Monica R. Valentine, Executive Director, 441 G Street NW, Suite 1155, Washington, DC 20548, or call (202) 512–7350.

SUPPLEMENTARY INFORMATION: FASAB is the body designated to establish generally accepted accounting principles for Federal Government entities. Generally, non-Federal Board members are selected from the general financial community, the accounting and auditing community, or the academic community.

The Board generally meets for two days every other month in Washington, DC, except for its December and February meetings, which are virtual. Members are compensated for 24 days per year based on current Federal executive salaries. Travel expenses are reimbursed in accordance with Federal travel regulations.

Authority: 31 U.S.C. 3511(d); Federal Advisory Committee Act, 5 U.S.C. 1001–1014.

Dated: April 4, 2024.

Monica R. Valentine,

Executive Director.

[FR Doc. 2024–07580 Filed 4–9–24; 8:45 am]

BILLING CODE 1610–02–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0874; FR ID 212077]

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 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 collection(s). Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before June 10, 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 contacts 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 Number: 3060–0874.

Title: Consumer Complaint Center: Informal Consumer Complaints.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households; Business or other for-profit entities; Not for profit institutions; State, Local or Tribal Government.

Number of Respondents and Responses: 269,680 respondents; 269,680 responses.

Estimated Time per Response: 15 minutes (.25 hour) to 1 hour.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Voluntary. The statutory authority for this collection is contained in 47 U.S.C. 208 and 47 U.S.C. 1754(e).

Total Annual Burden: 68,000 hours.

Total Annual Cost: None.

Needs and Uses: The Commission consolidated all of the FCC informal consumer complaint intake into an online consumer complaint portal, which allows the Commission to better manage the collection of informal consumer complaints. Informal consumer complaints consist of informal consumer complaints, inquiries and comments. This revised information collection requests OMB approval for the addition of a layer of consumer reported complaint information related to digital discrimination complaints. In addition, changes to certain complaint forms to improve the clarity, ease of use and utility of the CCC.

This will allow the Commission to process consumer complaints more efficiently and provide more detailed data to inform enforcement and policy efforts.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2024–07548 Filed 4–9–24; 8:45 am]

BILLING CODE P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1258; FR ID 213125]

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 (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.

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.

DATES: Written PRA comments should be submitted on or before June 10, 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:

OMB Control Number: 3060–1258.

Title: Alternative Dispute Resolution Intake Form.

Form Number: FCC Form 5628.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households; Federal Government.

Number of Respondents and Responses: 3 respondents; 3 responses.

Estimated Time per Response: 3 hours–6 hours.

Frequency of Response: One-time reporting requirement.

Obligation to Respond: Voluntary. Statutory authority for this information collection is contained in Administrative Dispute Resolution Act, 5 U.S.C. 571 *et seq.;* Civil Justice Reform, Executive Order 12988; 29 CFR 1614.102(b)(2), 1614.105(f), 1614.108(b), and 1614.603.

Total Annual Burden: 25 hours.

Total Annual Cost: $3,750.

Needs and Uses: FCC employees and related individuals may seek a forum through the Office of Workplace Diversity to resolve workplace disputes by engaging in the Commission's Alternative Dispute Resolution Program by completing FCC Form–5628.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2024–07549 Filed 4–9–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID 212656]

Radio Broadcasting Services; AM or FM Proposals To Change the Community of License

AGENCY: Federal Communications Commission.

ACTION: Notice.

DATES: The agency must receive comments on or before June 10, 2024.

ADDRESSES: Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, 202–418–2054, *Rolanda-Faye.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION: The following applicants filed AM or FM proposals to change the community of license: METRO RADIO, INC., WKDV(AM), FAC. ID NO. 8672, FROM: MANASSAS, VA, TO: CHANTILLY, VA, FILE NO. 0000235001; SSR COMMUNICATIONS, INC., KCAY(FM), FAC. ID NO. 203590, FROM: DAMMERON VALLEY, UT, TO: IVINS, UT, FILE NO. 0000237979; COMMUNITY SERVICE BROADCASTING FOUNDATION, INC., KIXK(FM), FAC. ID NO. 769057, FROM: CALIENTE, NV, TO: DAMMERON VALLEY, UT, FILE NO. 0000237978; EDUCATIONAL MEDIA FOUNDATION, WFFF–FM, FAC. ID NO. 25817, FROM: COLUMBIA, MS, TO: BOGUE CHITTO, MS, FILE NO. 0000240434; and METRO BROADCASTERS—TEXAS, INC., KXEZ(FM), FAC. ID NO. 86121, FROM: FARMERSVILLE, TX, TO: PRINCETON, TX, FILE NO. 0000242830. The full text of these applications is available electronically via Licensing and Management System (LMS), *https://apps2int.fcc.gov/dataentry/public/tv/publicAppSearch.html.*

Federal Communications Commission.

Nazifa Sawez,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 2024–07600 Filed 4–9–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0422; FR ID 213219]

Information Collection Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, 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. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before May 10, 2024.

ADDRESSES: Comments should be sent 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. Your comment must be submitted into *www.reginfo.gov* per the above instructions for it to be considered. In addition to submitting in *www.reginfo.gov* also send a copy of your comment on the proposed information collection to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: The Commission 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.

As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this

opportunity to comment on the following information collection. Comments are requested concerning: (a) 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; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) 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. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–0422.

Title: Hearing Aid Compatibility; Access to Telecommunications Equipment and Services by Persons with Disabilities; Section 68.5 Waivers, CC Docket No. 87–124 and CG Docket No. 13–46.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; not-for-profit entities.

Number of Respondents and Responses: 331 respondents; 2,512 responses.

Estimated Time per Response: 0.25 hour (15 minutes) to 24 hours.

Frequency of Response: Annual and on-occasion reporting requirements; Third party disclosure requirement; Recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is found at section 710 of the Communications Act of 1934, as amended, 47 U.S.C. 610.

Total Annual Burden: 5,930 hours.

Total Annual Cost: $375,000.

Needs and Uses: This notice and request for comments pertains to the extension of the currently approved information collection requirements concerning hearing aid compatibility (HAC) for wireline handsets used with the legacy telephone network and with advanced communications services (ACS), such as Voice over Internet Protocol (VoIP). The latter are known as ACS telephonic customer premises equipment (ACS telephonic CPE).

Beginning in the 1980s, the Commission adopted a series of regulations to implement statutory directives in section 710(b) of the Communications Act of 1934 requiring wireline telephone handsets in the United States (for use with the legacy telephone network) to be hearing aid compatible. 47 U.S.C. 610. In 2010, the Twenty-First Century Communications and Video Accessibility Act (CVAA), Public Law 111–260, sec. 102, 710(b), 124 Stat. 2751, 2753 (CVAA) (codified at 47 U.S.C. 610(b)), amended by Public Law 111–265, 124 Stat. 2795 (technical corrections to the CVAA), amended section 710(b) of the Communications Act of 1934, to apply the HAC requirements to ACS telephonic CPE, including VoIP telephones. In accordance with this provision, the Commission adopted Access to Telecommunications Equipment and Services by Persons with Disabilities et al., Report and Order and Order on Reconsideration, FCC 17–135, published at 83 FR 8624, February 28, 2018, which amended the HAC rules to cover ACS telephonic CPE to the extent such devices are designed to be held to the ear and provide two-way voice communication via a built-in speaker.

The information collections contain third-party disclosure and labeling requirements. The information is used to inform consumers who purchase or use wireline telephone equipment whether the telephone is hearing aid compatible; to ensure that manufacturers comply with applicable regulations and technical criteria; to ensure that information about ACS telephonic CPE is available in a database administered by the Administrative Council for Terminal Attachments (ACTA) (an organization, previously created pursuant to FCC regulations, whose key function is to maintain a database of telephone equipment); and to facilitate the filing of complaints about the ACS telephonic CPE.

Wireline Handsets Used With the Legacy Telephone Network

- 47 CFR 68.224 requires that every non-hearing aid compatible wireline telephone used with the legacy wireline network that is offered for sale to the public contain in a conspicuous location on the surface of its packaging a statement that the telephone is not hearing aid compatible. If the handset is offered for sale without a surrounding package, then the telephone must be affixed with a written statement that the telephone is not hearing aid compatible. In addition, each handset must be accompanied by instructions in accordance with 47 CFR 62.218(b)(2).
- 47 CFR 68.300 requires that all wireline telephones used with the legacy wireline network that are manufactured in the United States (other than for export) or imported for use in the United States and that are hearing aid compatible have the letters ''HAC'' permanently affixed.

ACS Telephonic CPE

- 47 CFR 68.502(a) of the Commission's rules contains information collection requirements for ACS telephonic CPE that are similar to the HAC label and notice requirements in 47 CFR 68.224 and 68.300 (discussed above), *i.e.,* the ''HAC'' labeling requirement for hearing aid compatible equipment, and the package information for non-hearing aid compatible equipment, apply to ACS telephonic CPE.
- 47 CFR 68.501 of the Commission's rules requires responsible parties to obtain certifications of their equipment by using a third-party Telecommunications Certification Body (TCB) or a Supplier's Declaration of Conformity. (A responsible party is the party, such as the manufacturer, that is responsible for the compliance of ACS telephonic CPE with the hearing aid compatibility rules and other applicable technical criteria. A Supplier's Declaration of Conformity is a procedure whereby a responsible party makes measurements or takes steps to ensure that CPE complies with technical standards, which results in a document by the same name.) Section 68.501 of the Commission's rules applies to ACS telephonic CPE the rule sections defining the roles of TCBs and the uses of Supplier's Declarations of Conformity for wireline handsets used with the legacy telephone network.
- 47 CFR 68.504 of the Commission's rules requires information about ACS telephonic CPE to be included in a database administered by ACTA. In addition, ACS telephonic CPE must be labeled as required by ACTA.
- 47 CFR 68.502(b)–(d) of the Commission's rules requires responsible parties to: warrant that ACS telephonic CPE complies with applicable regulations and technical criteria; give the user instructions required by ACTA for ACS telephonic CPE that is hearing aid compatible; give the user a notice for ACS telephonic CPE that is not hearing aid compatible; and notify the purchaser or user of ACS telephonic CPE whose approval is revoked, that the purchaser or user must discontinue its use.
- 47 CFR 68.503 of the Commission's rules requires manufacturers of ACS telephonic CPE to designate an agent for service of process for complaints that may be filed at the FCC.

Applications for Waiver of HAC Requirements

• 47 CFR 68.5 requires that telephone manufacturers seeking a waiver of 47 CFR 68.4(a)(1) (requiring that certain telephones be hearing aid compatible) demonstrate that compliance with the rule is technologically infeasible or too costly. Information is used by FCC staff to determine whether to grant or dismiss the request.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2024–07550 Filed 4–9–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments received are subject to public disclosure. In general, comments received will be made available without change and will not be modified to remove personal or business information including confidential, contact, or other identifying information. Comments should not include any information such as confidential information that would not be appropriate for public disclosure.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than April 25, 2024.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414. Comments can also be sent electronically to *Comments.applications@chi.frb.org:*

1. *The William H. Bosshard Family GST Trust dated December 12, 2023, La Crosse, Wisconsin, Andrew R. Bosshard, La Crosse, Wisconsin, and Joseph W. Bosshard, Boulder, Colorado, as co-trustees, to join the Bosshard Family Group, a group acting in concert;* to acquire voting shares of Mauston Bancorp, Inc., La Crosse, Wisconsin, and thereby indirectly acquire voting shares of Bank of Mauston, Mauston, Wisconsin.

B. Federal Reserve Bank of Minneapolis (Stephanie Weber, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291. Comments may also be sent electronically to *MA@mpls.frb.org:*

1. *The William H. Bosshard Family GST Trust dated December 12, 2023, La Crosse, Wisconsin, Andrew R. Bosshard, La Crosse, Wisconsin, and Joseph W. Bosshard, Boulder, Colorado, as co-trustees, to join the Bosshard Family Group, a group acting in concert;* to acquire voting shares of Clayton Bankshares, Inc., La Crosse, Wisconsin and thereby indirectly acquire voting shares of Citizens State Bank—La Crosse, La Crosse, Wisconsin. Co-trustee Andrew R. Bosshard was previously permitted by the Federal Reserve System to join the Bosshard Family Group with regard to control of the voting shares of Clayton Bankshares, Inc., and Citizens State Bank—La Crosse in the capacity as trust protector of the Bosshard Bank Trust.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2024–07618 Filed 4–9–24; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments received are subject to public disclosure. In general, comments received will be made available without change and will not be modified to remove personal or business information including confidential, contact, or other identifying information. Comments should not include any information such as confidential information that would not be appropriate for public disclosure.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than May 10, 2024.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414. Comments can also be sent electronically to *Comments.applications@chi.frb.org:*

1. *GTSB Financial Inc., Plymouth, Michigan;* to become a bank holding company by acquiring First State Bank of Decatur, Decatur, Michigan.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2024–07619 Filed 4–9–24; 8:45 am]

BILLING CODE P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (''PRA''), the Federal Trade Commission (''FTC'' or ''Commission'') is seeking public comment on its proposal to extend for an additional three years the Office of Management and Budget clearance for information collection requirements in its rule governing Care Labeling of Textile Wearing Apparel and Certain Piece Goods As Amended (''Care Labeling Rule''). This clearance expires on June 30, 2024.

DATES: Comments must be filed by June 10, 2024.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Care Labeling Rule, PRA Comment, P085405,'' on your comment, and file your comment online at *https://www.regulations.gov* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Jock Chung, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, (202) 326–2984, *jchung@ftc.gov.*

SUPPLEMENTARY INFORMATION:

Title of Collection: Care Labeling of Textile Wearing Apparel and Certain Piece Goods As Amended, 16 CFR part 423.

OMB Control Number: 3084–0103.

Type of Review: Extension of currently approved collection.

Affected Public: Private Sector: Businesses and other for-profit entities.

Estimated Annual Burden Hours: 27,489,476 hours.

Estimated Annual Labor Costs: $217,189,935.52.

Abstract:

The Care Labeling Rule requires manufacturers and importers of textile wearing apparel and certain piece goods to attach labels to their products disclosing the care needed for the ordinary use of the product. The Rule also requires manufacturers or importers to possess a reasonable basis for care instructions and allows the use of approved care symbols in lieu of words to disclose those instructions.

As required by section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), the FTC is providing this opportunity for public comment before requesting that OMB extend the existing clearance for the information collection requirements contained in the Rule.

Burden statement:

Staff estimates that approximately 10,744 manufacturers or importers of textile apparel, producing about 18.4 billion textile garments annually, are subject to the Rule's disclosure requirements. Staff estimates the burden of determining care instructions to be 100 hours each year per firm, for a cumulative total of 1,074,400 hours. Staff further estimates that the burden of drafting and providing labels is 80 hours each year per firm, for a total of 859,520 hours. Staff believes that the process of attaching labels is fully automated and integrated into other production steps for about 50 percent (approximately 9.2 billion) of the approximately 18.4 billion garments that are required to have care instructions on permanent labels. For the remaining 9.2 billion items, the process is semi-automated and requires an average of approximately ten seconds per item, for a total of 25,555,556 hours per year. Thus, the total estimated annual burden for all firms is 27,489,476 hours.

The chart below summarizes the total estimated costs.

Task	Hourly rate	Burden hours	Labor cost
Determine care instructions	[1] $31.49	1,074,400	$33,832,856.00
Draft and order labels	[2] 19.47	859,520	16,734,854.40
Attach labels	[3] 6.52	25,555,556	166,622,225.12
Total	.....	.....	217,189,935.52

Staff believes that there are no current start-up costs or other capital costs associated with the Care Labeling Rule. Because the labeling of textile products has been an integral part of the manufacturing process for decades, manufacturers have in place the capital equipment necessary to comply with the Rule's labeling requirements. Based on knowledge of the industry, staff believes that much of the information required by the Rule would be included on the product label even absent those requirements.

[1] The wage rate for supervisors of Office and Administrative Support Supervisors is based on data through May 2022 from the Bureau of Labor Statistics Occupational Employment Statistics Survey at *https://www.bls.gov/news.release/ocwage.htm* (released on April 25, 2023).

[2] The wage rate for Information and Record Clerks is based on recent data from the Bureau of Labor Statistics Occupational Employment Statistics Survey at *https://www.bls.gov/news.release/ocwage.htm.*

[3] For imported products, the labels generally are attached in the country where the products are manufactured. According to information compiled by an industry trade association using data from the U.S. Department of Commerce, International Trade Administration, and the U.S. Census Bureau, approximately 97.1% of apparel used in the United States is imported. With the remaining 2.9% attributable to U.S. production at an approximate domestic hourly wage of $14.73 to attach labels, staff has calculated a weighted average hourly wage of $6.52 per hour attributable to U.S. and foreign labor combined.

Request for Comment

Pursuant to Section 3506(c)(2)(A) of the PRA, the FTC invites comments on: (1) whether the disclosure and recordkeeping requirements are necessary, including whether the information will be practically useful; (2) the accuracy of our burden estimates, including whether the methodology and assumptions used are valid; (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.

For the FTC to consider a comment, we must receive it on or before June 10, 2024. Your comment, including your name and your state, will be placed on the public record of this proceeding, including the *https://www.regulations.gov* website.

You can file a comment online or on paper. Due to heightened security screening, postal mail addressed to the Commission will be subject to delay. We encourage you to submit your comments online through the *https://www.regulations.gov* website.

If you file your comment on paper, write ''Care Labeling Rule, PRA Comment, P085405,'' on your comment and on the envelope, and mail it to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580.

Because your comment will become publicly available at *https://*

www.regulations.gov, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including, in particular, competitively sensitive information, such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must (1) be filed in paper form, (2) be clearly labeled ''Confidential,'' and (3) comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at *www.regulations.gov,* we cannot redact or remove your comment unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before June 10, 2024. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

Josephine Liu,

Assistant General Counsel for Legal Counsel.

[FR Doc. 2024–07569 Filed 4–9–24; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Docket No. 2024–0054; Sequence No. 1]

Federal Acquisition Regulation: FAR Part 40, Information Security and Supply Chain Security; Request for Information

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for information (RFI).

SUMMARY: DoD, GSA, and NASA recently established Federal Acquisition Regulation (FAR) part 40, Information Security and Supply Chain Security. The intent of this RFI is to solicit feedback from the general public on the scope and organization of FAR part 40.

DATES: Interested parties should submit written comments to the Regulatory Secretariat Division at the address shown below on or before June 10, 2024 to be considered in the formation of the changes to FAR part 40.

ADDRESSES: Submit comments in response to this RFI to the Federal eRulemaking portal at *https://www.regulations.gov* by searching for ''RFI FAR part 40''. Select the link ''Comment Now'' that corresponds with ''RFI FAR part 40''. Follow the instructions provided on the ''Comment Now'' screen. Please include your name, company name (if any), and ''RFI FAR part 40'' on your attached document. If your comment cannot be submitted using *https://www.regulations.gov,* call or email the points of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Instructions: Response to this RFI is voluntary. Respondents may answer as many or as few questions as they wish. Each individual or entity is requested to submit only one response to this RFI. Please identify your answers by responding to a specific question or topic if possible. Please submit responses only and cite ''RFI FAR part 40'' in all correspondence related to this RFI. Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal and/or business confidential information provided. Public comments may be submitted as an individual, as an organization, or anonymously (see frequently asked questions at *https://www.regulations.gov/faq*). To confirm receipt of your comment(s), please check *https://www.regulations.gov,* approximately two-to-three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Malissa Jones, Procurement Analyst, at 571–882–4687 or by email at *malissa.jones@gsa.gov.* For information pertaining to status, publication schedules, or alternate instructions for submitting comments if *https://www.regulations.gov* cannot be used, contact the Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.* Please cite FAR Case 2023–008.

SUPPLEMENTARY INFORMATION: The final FAR rule 2022–010, Establishing FAR part 40, amended the FAR to establish a framework for a new information security and supply chain security FAR part, FAR part 40. The final rule does not implement any of the information security and supply chain security policies or procedures; it simply established FAR part 40. The final FAR rule was published in the **Federal Register** at 89 FR 22604, on April 1, 2024. Relocation of existing requirements and placement of new requirements into FAR part 40 will be done through separate rulemakings.

Currently, the policies and procedures for prohibitions, exclusions, supply chain risk information sharing, and safeguarding information that address security objectives are dispersed across multiple parts of the FAR, which makes it difficult for the acquisition workforce and the general public to understand and implement applicable requirements. FAR part 40 will provide the acquisition team with a single, consolidated location in the FAR that addresses their role in implementing requirements related to managing information security and supply chain security when acquiring products and services.

The new FAR part 40 provides a location to cover broad security requirements that apply across acquisitions. These security requirements include requirements designed to bolster national security through the management of existing or potential adversary-based supply chain risks across technological, intent-based, or economic means (*e.g.,* cybersecurity

supply chain risks, foreign-based risks, emerging technology risks). The intent is to structure FAR part 40 based on the objectives of the regulatory requirement (similar to how environmental objectives are covered in FAR part 23, and labor objectives are addressed in FAR part 22). Security-related requirements that include and go beyond information and communications technology (ICT) will be covered under FAR part 40. An example of products and services that include and go beyond ICT are cybersecurity supply chain risk management requirements such as requirements related to section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115–232). Security-related requirements that only apply to ICT acquisitions will continue to be covered in FAR part 39. The test for whether existing regulations would be in FAR part 40 would be based on the following questions:

- Question 1: Is the regulation or FAR case addressing security objectives?
  - If yes, move to question 2
  - If no, the regulation would be located in another part of the FAR.
- Question 2: Is the scope of the requirements limited to ICT?
  - If yes, the regulation would be located in FAR part 39
  - If no, the regulation would be located FAR part 40.

The following are examples of the FAR subparts and regulations that are under consideration and could potentially be located in, or relocated to, FAR part 40:

Part 40—Information Security and Supply Chain Security

40.000 Scope of part.
- General Policy Statements
- Cross reference to updated FAR part 39 scoped to ICT

Subpart 40.1—Processing Supply Chain Risk Information
- FAR 4.2302, sharing supply chain risk information
- Cross reference to counterfeit and nonconforming parts (FAR 46.317)
- Cross reference to cyber threat and incident reporting and information sharing (FAR case 2021–017)

Subpart 40.2—Security Prohibitions and Exclusions
- FAR subpart 4.20, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab
- FAR subpart 4.21, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment
- FAR subpart 4.22, Prohibition on a ByteDance Covered Application, which covers the TikTok application, from FAR case 2023–010
- Prohibition on Certain Semiconductor Products and Services (FAR case 2023–008)
- FAR subpart 4.23, Federal Acquisition Security Council, except section 4.2302
- Covered Procurement Action/ agency specific exclusion orders (FAR case 2019–018)
- FAR subpart 25.7, Prohibited Sources
- Prohibition on Operation of Covered Unmanned Aircraft Systems from Covered Foreign Entities (FAR case 2024–002)

Subpart 40.3—Safeguarding Information
- FAR subpart 4.4, Safeguarding Classified Information Within Industry
- Controlled Unclassified Information (CUI) (FAR case 2017–016)
- FAR subpart 4.19, Basic Safeguarding of Covered Contractor Information Systems

In this notice, DoD, GSA, and NASA are providing an opportunity for members of the public to provide comments on the proposed scope of FAR part 40. Feedback provided should support the goal of providing a single location to cover broad security requirements that apply across acquisitions. Providing the acquisition team with a single, consolidated location in the FAR that addresses their role in implementing requirements related to managing information security and supply chain security when acquiring products and services will enable the acquisition workforce to understand and implement applicable requirements more easily.

DoD, GSA, and NASA seek responses to any or all the questions that follow this paragraph. Where possible, include specific examples of how your organization is or would be impacted negatively or positively by the recommended scope and subparts; if applicable, provide rationale supporting your position. If you believe the proposed scope and subparts should be revised, suggest an alternative (which may include not providing guidance at all) and include an explanation, analysis, or both, of how the alternative might meet the same objective or be more effective. Comments on the economic effects including quantitative and qualitative data are especially helpful. In addition to the FAR parts and subparts proposed for relocation to FAR part 40, let us know:

1. What specific section(s) of the FAR would benefit from inclusion in FAR part 40?
2. What specific suggestions do you have for otherwise improving the proposed scope or subparts of FAR part 40?

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2024–07535 Filed 4–9–24; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0163; Docket No. 2024–0053; Sequence No. 3]

Submission for OMB Review; Small Business Size Rerepresentation

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement regarding small business size rerepresentation.

DATES: Submit comments on or before May 10, 2024.

ADDRESSES: Written comments and recommendations for this information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Zenaida Delgado, Procurement Analyst, at telephone 202–969–7207, or *zenaida.delgado@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. OMB Control Number, Title, and Any Associated Form(s)

OMB Control No. 9000–0163, Small Business Size Rerepresentation.

B. Need and Uses

This clearance covers the information that contractors must submit to comply

with the following Federal Acquisition Regulation (FAR) requirements:

• FAR 52.219–28, Post-Award Small Business Program Rerepresentation. This clause requires contractors that originally represented themselves as a small business for a contract award to rerepresent their size and socioeconomic status at the prime contract level by updating their representations in the Representations and Certifications section of the System for Award Management (SAM). Contractors are also required to notify the contracting officer by email, or otherwise in writing, that the rerepresentations have been made, and provide the date on which they were made.

Small business contractors are required to rerepresent their size and socioeconomic status upon occurrence of any of the following:

(a) For the NAICS code(s) in the contract—

(1) Within 30 days after execution of a novation agreement or within 30 days after modification of the contract to include FAR clause 52.219–28 if the novation agreement was executed prior to inclusion of this clause in the contract.

(2) Within 30 days after a merger or acquisition of the contractor that does not require novation or within 30 days after modification of the contract to include the clause at 52.219–28 if the merger or acquisition occurred prior to inclusion of this clause in the contract;

(3) For long-term contracts—

(i) Within 60 to 120 days prior to the end of the fifth year of the contract; and

(ii) Within 60 to 120 days prior to the date specified in the contract for exercising any option thereafter.

(b) When contracting officers explicitly require it for an order issued under a multiple-award contract.

The collected information is used by the Small Business Administration, Congress, Federal agencies and the general public for various reasons, such as determining if agencies are meeting statutory goals, set-aside determinations, and market research.

C. Annual Burden

Respondents: 3,482.
Total Annual Responses: 5,098.
Total Burden Hours: 2,549.

D. Public Comment

A 60-day notice was published in the **Federal Register** at 89 FR 6523, on February 1, 2024. A comment was received; however, it did not change the estimate of the burden.

Comment: The respondent expressed concerns about proposed changes that could result in small businesses missing contracting opportunities because their small business size standard changes while waiting for the Government to evaluate proposals and make awards. The respondent stated that a gap of multiple years is not uncommon for the Government's process. The respondent indicated that the proposed changes are not needed.

Response: The comment is not relevant to the request for comments. The respondent's comment appears to express views regarding the proposed rule for FAR Case 2020–016, Rerepresentation of Size and Socioeconomic Status, published on September 29, 2023 (88 FR 67189). The respondent supports the current FAR policy and did not express opposition to its associated information collection as described on the 60-day notice published in the **Federal Register** for the extension of the collection.

Obtaining Copies: Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division, by calling 202–501–4755 or emailing *GSARegSec@gsa.gov.* Please cite OMB Control No. 9000–0163, Small Business Size Rerepresentation.

William Clark,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2024–07534 Filed 4–9–24; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Supporting Youth To Be Successful in Life (SYSIL) Study—Extension With Proposed Revisions (Office of Management and Budget #: 0970–0574)

AGENCY: Office of Planning, Research, and Evaluation, Administration for Children and Families, Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Administration for Children and Families (ACF) is requesting approval from the Office of Management and Budget (OMB) for an extension with proposed revisions of a currently approved information collection activity as part of the Supporting Youth to be Successful in Life (SYSIL) study (OMB #: 0970–0574; expiration date: 07/31/2024).

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: Copies of the proposed collection of information can be obtained and comments may be forwarded by emailing *OPREinfocollection@acf.hhs.gov.* Alternatively, copies can also be obtained by writing to the Administration for Children and Families, Office of Planning, Research, and Evaluation, 330 C Street SW, Washington, DC 20201, Attn: OPRE Reports Clearance Officer. All requests, emailed or written, should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: SYSIL builds evidence on how to decrease the risk of homelessness among youth and young adults with experience in the child welfare system by continuing work with an organization who conducted foundational work as part of the Youth At-Risk of Homelessness project (OMB Control Number: 0970–0445). SYSIL will provide important information to the field by designing and conducting a federally led evaluation of a comprehensive service model for youth at risk of homelessness.

The SYSIL evaluation includes an implementation study and an impact study, which will use a rigorous quasi-experimental design that includes a comparison group. This information collection request includes the baseline and follow-up survey instruments for the impact study (a single instrument administered three times), and discussion guides for interviews and focus groups for the implementation study. The data collected from the baseline and follow-up surveys will be used to describe the characteristics of the study sample of youth, develop models for estimating program impacts, and determine program effectiveness by comparing outcomes between youth in the treatment (youth receiving the Pathways program) and control groups. The study also collects updated contact information from youth at two points in time to assist in reaching youth to complete follow-up surveys. Data from the interviews and focus groups will provide a detailed understanding of program implementation. We are also conducting brief check-ins with program directors using a subset of questions from the interview guides to collect information on services provided at two additional points in time. The

study also uses administrative data from the child welfare system, homelessness management information system, and program providers. Administrative data is being used in its existing format and does not impose any new information collection or recordkeeping requirements on respondents.

The purpose of the requested extension is to continue the ongoing data collection, which will provide information on focal youth outcomes and program implementation. We are also requesting revisions to the interview and focus group protocols, as well as an additional round of interviews and focus groups. The purpose of the proposed revision is to better understand their experiences in delivering and receiving services and gather information on topics not previously covered in the protocols.

Respondents: The baseline and follow-up surveys and contact update requests are administered to youth in the treatment group (youth receiving the Pathways program) and youth in the control group who consent to participate in the study. Interviews are conducted with program leadership and staff. Focus groups are conducted with a subset of youth who are participating in the study. Check-ins are conducted with program directors.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents (total over request period)	Number of responses per respondent (total over request period)	Avg. burden per response (in hours)	Total burden (in hours)	Annual burden (in hours)
SYSIL Youth Survey—Baseline survey	382	1	.42	160.44	53
SYSIL Youth Survey—Follow-up survey 1 (6 months)	466	1	.42	195.72	65
SYSIL Youth Survey—Follow-up survey 2 (12 months)	501	1	.42	210.42	70
Interview guide for Pathways sites (treatment sites)	80	1	1.5	120	40
Program Director Check-ins for Pathways sites (treatment sites)	45	1	.5	22.5	8
Interview guide for comparison sites	73	1	1.5	109.5	37
Program Director Check-ins for comparison sites	30	1	.5	15	5
Focus group discussion guide for Pathways youth (treatment youth)	74	1	1.5	111	37
Focus group discussion guide for comparison youth	73	1	1.5	109.5	37
Contact Information Update Requests	313	2	.08	50.08	17

Estimated Total Annual Burden Hours: 369.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: Section 105(b)(5) of the Child Abuse Prevention and Treatment Act (CAPTA) of 1978 (42 U.S.C. 5106(b)(5)), as amended by the CAPTA Reauthorization Act of 2010 (Pub. L. 111–320).

Mary C. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2024–07572 Filed 4–9–24; 8:45 am]

BILLING CODE 4184–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for Office of Management and Budget Review; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery (Office of Management and Budget #: 0970–0401)

AGENCY: Administration for Children and Families, Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Administration for Children and Families (ACF) proposes to extend data collection under the existing overarching Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery (Office of Management and Budget (OMB) #0970–0401). There are no changes to the proposed types of information collection or uses of data, but ACF is requesting an increase to the estimated number responses per respondent.

DATES: *Comments due within 30 days of publication.* OMB must make a decision about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. You can also obtain copies of the proposed collection of information by emailing *OPREinfocollection@acf.hhs.gov.* Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: Executive Order 12862 directs federal agencies to provide service to the public that matches or exceeds the best service available in the private sector. As outlined in Memorandum M–11–26, OMB worked with agencies to create a Fast Track Process to allow agencies to obtain timely feedback on service delivery while ensuring that the information collected is useful and minimally burdensome for the public, as required by the Paperwork Reduction Act of

1995. ACF created this generic clearance in response to this effort by OMB.

To work continuously to ensure that the ACF programs are effective and meet our customers' needs, we use this Fast Track generic clearance process to collect qualitative feedback on our service delivery. This collection of information is necessary to enable ACF to garner customer and stakeholder feedback in an efficient, timely manner in accord with our commitment to improving service delivery. The information collected from our customers and stakeholders helps ensure that users have an effective, efficient, and satisfying experience with the programs. This feedback provides insights into customer or stakeholder perceptions, experiences, and expectations; provides an early warning of issues with service; or focus attention on areas where communication, training, or changes in operations might improve delivery of products or services. These collections allow for ongoing, collaborative, and actionable communications between ACF and its customers and stakeholders. They also allow feedback to contribute directly to the improvement of program management.

Per Memorandum M–11–26, information collection requests submitted under this Fast Track generic will be considered approved unless OMB notifies ACF otherwise within 5 days.

Respondents: ACF program participants, potential program participants, stakeholders, and other customers.

Annual Burden Estimates

Burden Estimates—Approved Information Collection

The request to OMB will include an extension request for 98 approved information collections that are planned to continue beyond May 2024. The total burden associated with these collections is 15,196 hours.

Burden Estimates—New Requests

The following table includes burden estimates for new requests under this generic over the next 3 years. Based on the use of this generic clearance over the past 3 years, ACF is requesting an increase to the estimated number of responses per respondent from 1 to 2.

Type of collection	Total number of respondents	Average total number of responses per respondent	Average burden hours per response for types of collections	Total burden hours
Surveys	175,000	2	.5	50,000
Comment Cards/Forms			.25	
Feedback Questions			.083	
Focus Groups, Discussions, Cognitive Studies			1	

Authority: Social Security Act, Sec. 1110. [42 U.S.C. 1310].

Mary C. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2024–07614 Filed 4–9–24; 8:45 am]

BILLING CODE 4184–88–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request; The National Health Service Corps Loan Repayment Programs

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, HRSA submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period. OMB may act on HRSA's ICR only after the 30-day comment period for this notice has closed.

DATES: Comments on this ICR should be received no later than May 10, 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 Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email Joella Roland, the HRSA Information Collection Clearance Officer, at *paperwork@hrsa.gov* or call (301) 443–3983.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: The National Health Service Corps Loan Repayment Programs, OMB No. 0915–0127—Revision

Abstract: The National Health Service Corps (NHSC) Loan Repayment Program (LRP) was established to assure an adequate supply of trained primary care health professionals to provide services in Health Professional Shortage Areas (HPSAs) of the United States with the greatest need. The NHSC Substance Use Disorder Workforce LRP and the NHSC Rural Community LRP were established to recruit and retain a health professional workforce with specific training and credentials to provide evidence-based substance use disorder treatment in HPSAs. Under these programs, HHS agrees to repay the qualifying educational loans of selected primary care health professionals. In return, the health professionals agree to serve for a specified period of time in an NHSC-approved site located in a federally-designated HPSA approved by the Secretary of HHS for LRP participants.

The forms used by each LRP include the following: (1) the NHSC LRP Application; (2) the Authorization for Disclosure of Loan Information Form; (3) the Privacy Act Release Authorization Form, and, if applicable; (4) the Verification of Disadvantaged Background Form; (5) the Private Practice Option Form; (6) the NHSC Comprehensive Behavioral Health Services Checklist; (7) the NHSC Spanish Language Assessment Proficiency Test Form; and (8) the NHSC Site Application. The first four of these NHSC LRP forms collect information that is needed for selecting participants and repaying qualifying educational loans. The Private Practice Option and Spanish Language Assessment forms are needed to collect

information from applicants who wish to be considered for those options. The NHSC Comprehensive Behavioral Health Services Checklist collects information to ascertain whether behavioral health providers are practicing in a community-based setting that provides access to comprehensive behavioral health services. The NHSC Site Application collects information used for determining the eligibility of sites for the assignment of NHSC health professionals and to verify the need for NHSC clinicians.

A 60-day notice published in the **Federal Register** on January 23, 2024, vol. 88, No. 249; pp. 90191–92. There were no public comments.

Need and Proposed Use of the Information: The need and proposed use of this information collection is to assess an LRP applicant's eligibility and qualifications for the LRP, and to determine LRP applicants' Spanish language proficiency if relevant to their application, and to obtain information for NHSC site applicants. The NHSC LRP application asks for personal, professional, and financial/loan information.

Likely Respondents: Likely respondents include licensed primary care medical, dental, and behavioral health providers who are employed or seeking employment and are interested in serving underserved populations.

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
NHSC LRP Application	9,020	1	9,020	1.00	9,020
Authorization for Disclosure of Loan Information Form	7,150	1	7,150	0.10	715
Privacy Act Release Authorization Form	303	1	303	0.10	30
Verification of Disadvantaged Background Form	660	1	660	0.50	330
Private Practice Option Form	330	1	330	0.10	33
NHSC Comprehensive Behavioral Health Services Checklist	4,400	1	4,400	0.13	572
NHSC Spanish Language Assessment Proficiency Test Form	3,006	1	3,006	0.50	1,503
NHSC Site Application (including recertification)	4,070	1	4,070	0.50	2,035
Total	28,939		28,939		14,238

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2024–07590 Filed 4–9–24; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Research Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Findings of research misconduct have been made against Gian-Stefano Brigidi, Ph.D. (Respondent), who was a Postdoctoral Fellow, Department of Neurobiology, University of California San Diego (UCSD), and was an Assistant Professor, Department of Neurobiology, University of Utah (UU). Respondent engaged in research misconduct in research supported by U.S. Public Health Service (PHS) funds, specifically National Institute of Mental Health (NIMH), National Institutes of Health (NIH), grant F32 MH110141, National Human Genome Research Institute (NHGRI), NIH, grant T32 HG000044, National Institute of Neurological Disorders and Stroke (NINDS), NIH, grant P30 NS047101, and National Library of Medicine (NLM), NIH, grant T15 LM011271. The research was included in grant applications submitted for PHS funds, specifically R01 NS131809–01, R01 NS133405–01, DP2 NS127276–01, and R01 NS111162–01A1 submitted to NINDS, NIH, and R21 MH121860–01, R21 MH121860–01A1, F32 MH110141–01, F32 MH110141–01A1, and F32 MH110141–01AS1 submitted to NIMH, NIH. The administrative actions, including supervision for a period of five (5) years, were implemented beginning on March 24, 2024, and are detailed below.

FOR FURTHER INFORMATION CONTACT: Sheila Garrity, JD, MPH, MBA, Director, Office of Research Integrity, 1101 Wootton Parkway, Suite 240, Rockville, MD 20852, (240) 453–8200

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Office of Research Integrity (ORI) has taken final action in the following case:

Gian-Stefano Brigidi, Ph.D., University of California San Diego (UCSD) and University of Utah (UU): Based on the report of an assessment conducted by UU, and inquiry conducted by UCSD, the Respondent's admission, and additional analysis conducted by ORI in its oversight review, ORI found that Dr. Gian-Stefano Brigidi, former Postdoctoral Fellow in the Department of Neurobiology, UCSD, and former Assistant Professor, Department of Neurobiology, UU, engaged in research misconduct in research supported by PHS funds, specifically NIMH, NIH, grant F32 MH110141, NHGRI, NIH, grant T32 HG000044, NINDS, NIH, grant P30 NS047101, and NLM, NIH, grant T15 LM011271. The research was included in grant applications submitted for PHS funds, specifically R01 NS131809–01, R01 NS133405–01, DP2 NS127276–01, and R01 NS111162–01A1 submitted to NINDS, NIH, and R21 MH121860–01, R21 MH121860–01A1, F32 MH110141–01, F32 MH110141–01A1, and F32 MH110141–01AS1 submitted to NIMH, NIH.

ORI found that Respondent engaged in research misconduct by knowingly or intentionally falsifying and/or fabricating data and results by manipulating primary data values to falsely increase the n-value, manipulating fluorescence micrographs and their quantification graphs to augment the role of ITFs in murine hippocampal neurons, and/or

manipulating confocal images that were obtained through different experimental conditions in twenty (20) figures of one (1) published paper and four (4) PHS grant applications, one (1) panel of one (1) poster, and seven (7) slides of one (1) presentation:

• Genomic Decoding of Neuronal Depolarization by Stimulus-Specific NPAS4 Heterodimers. *Cell.* 2019 Oct 3;179(2):373–391.e27. doi: 10.1016/j.cell.2019.09.004 (hereafter referred to as ''*Cell* 2019'').

• Genomic mechanisms linking neuronal activity history with present and future functions. Poster for ''The Brigidi Lab—a neuronal activity lab in the Department of Neurobiology at the University of Utah'' (hereafter referred to as the ''UU Department of Neurobiology poster'').

• Decoding neural circuit stimuli into spatially organized gene regulation. Presentation presented to the UU Department of Neurobiology & Anatomy on January 23, 2020 (hereafter referred to as ''UU Department of Neurobiology presentation'').

• DP2 NS127276–01, ''Decoding neuronal activity history at the genome through the spatially segregated inducible transcription factors,'' submitted to NINDS, NIH, on August 20, 2020, Awarded Project Dates: September 15, 2021–August 1, 2023.

• F32 MH110141–01, ''Regulation of excitatory-inhibitory balance by the local translation of the immediate early gene Npas4,'' submitted to NIMH, NIH, on August 10, 2015.

• F32 MH110141–01A1, ''Regulation of Excitatory-Inhibitory Balance by Local Translation of the Immediate Early Gene Npas4,'' submitted to NIMH, NIH, on December 8, 2015, Awarded Project Dates: August 1, 2016–July 31, 2018.

• F32 MH110141–01A1S1, ''Regulation of Excitatory-Inhibitory Balance by Local Translation of the Immediate Early Gene Npas4,'' submitted to NIMH, NIH, on December 8, 2016, Awarded Project Dates: December 1, 2016–July 31, 2017.

The falsified and/or fabricated data also were included in twenty-three (23) figures in the following five (5) PHS grant applications:

• R01 NS131809–01, ''Regulation and function of dendritic mRNA that encodes the neuronal transcription factor Npas4,'' submitted to NINDS, NIH, on June 6, 2022.

• R01 NS133405–01, ''Assessing the impact of the inducible transcription factor NPAS4 on spatial tuning in the mouse hippocampus,'' submitted to NINDS, NIH, on October 5, 2022.

• R01 NS111162–01A1, ''Molecular and cellular mechanisms underlying activity dependent gene regulation in neurons,'' submitted to NINDS, NIH, on March 5, 2019, Awarded Project Dates: December 15, 2019–November 30, 2024.

• R21 MH121860–01, ''Identification of dendritically-localized transcription factor mRNAs as a mechanism for conveying multiple streams of information to the nucleus,'' submitted to NIMH, NIH, on February 19, 2019.

• R21 MH121860–01A1, ''Identification of dendritically-localized transcription factor mRNAs,'' submitted to NIMH, NIH, on March 16, 2020.

Specifically, ORI found that:

1. Respondent knowingly or intentionally combined two to three real data sets and two to five fabricated data sets to falsely increase the n-values reported in:

• Figures 1B, 1D, 1E, 1G, 1I, 1J, 1M–1O, 1Q–1T, S2B–S2D, S2F–S2H, S3I, S3L, S3M, and S6H of *Cell* 2019 and Slides 6–10, 13, and 28 of the UU Department of Neurobiology presentation representing the quantification of NPAS4 immunohistofluorescence.

• Figures 2H, 2I, 2K, 2P, 3C, 3E, 4D–4G, 4K–4N, 4P–4Q, S3G, S5B, and S5C of *Cell* 2019 representing the quantification of *Npas4* mRNA or puro-PLA puncta.

• Figures S1E, S1G, and S1H of *Cell* 2019 representing the quantification of whole-cell clamp recordings of CA1 PN.

• Figures 2 (lower panel) and 3c of F32 MH110141–01, Figures 1g, 2b, 2d, and 4 of F32 MH110141–01A1S1, and Figures 1g, 2b, 2d, and 4 of F32 MH110141–01A1 representing time points of NPAS4 quantification after no stimulation or post-stimulation in the alveus or radiatum SR, SO, SP, SLM, with or without the addition of an inhibitor.

2. Respondent knowingly or intentionally manipulated confocal images that were obtained through different experimental conditions in:

• Figures 1A, 1C, and 1F of *Cell* 2019 and Slides 6–9 of the UU Department of Neurobiology presentation representing confocal images of hippocampal slices immunostained for NPAS4 and Neu.

• Figures S2A and S2E of *Cell* 2019 by manipulating and misrepresenting the GFP signals as NPAS4 signals in wildtype mice.

• Figures 1H, 1L, 1P, S3K, S6F, and S6G of *Cell* 2019 and Slides 9 and 28 of the UU Department of Neurobiology presentation by manipulating the raw images of hippocampal slices immunostained with NPAS4 and Neu and/or ARNT1 or ARNT2 by generating a mask of NPAS4 immunofluorescent signal through GFP signal from tissue obtained from Thy1–GFP mice to intentionally enhance the appearance of the dendritic NPAS4 signal.

• Figures S6F and S6G of *Cell* 2019 by manipulating the raw images of hippocampus slices by overlaying a GFP channel over ARNT1 channel and using the multiply feature in Photoshop to restrict ARNT1 signal through GFP to enhance the ARNT1 signal in three panels.

• Slides 7, 9, and 28 of the UU Department of Neurobiology presentation by manipulating six images representing post-stimulation with different time points by using a GFP mask overlaid on top of raw NPAS4 immunofluorescence.

• Figure 4 of DP2 NS127276–01 and panel 1 of the UU Department of Neurobiology poster representing twelve images in columns 2–4 labeled EGR, FOS, ATF4 by mislabeling the microscope images as immunofluorescent stained with antibodies against EGR, FOS, and ATF4 when they actually were stained with anti-NPAS4 and selected images to support the immunofluorescence data in the ITF induction graphs.

• Figure 5 of DP2 NS127276–01 representing two confocal images in the far-right column by intentionally and selectively enhancing the brightness of the anti-NPAS4 immunofluorescent channel within the dashed box and left brightness unchanged in surrounding areas of the images.

• Figure 6 of DP2 NS127276–01 in twelve images in columns 2–5 labeled *Egr2, Fos,* and *Atf4* by intentionally mislabeling the microscope images as RNA in situ hybridization with probes against Egr2, Fos, and Atf4 when they actually were stained with NPAS4 probes and intentionally selecting and quantifying images in the quantification graphs to support the conclusions of the grant application.

3. Respondent knowingly or intentionally manipulated the fluorescence micrographs and their quantification graphs to augment the role of ITFs in murine hippocampal neurons in Figures 2B–2G, 2J, 2L–2O, 3B, 3D, 3F–3H, 4C, 4J, 4O, S1A–S1D, S1F, S1I–S1J, S3A–S3F, S3H, S3J, S3N–S3T, S5D–S5G, and S6A–S6E of *Cell* 2019; the falsified/fabricated data also were included in Figures 2B–2H, 3, 4B–4E, and 5C–5G of R21 MH121860–01, Figures 2, 3B–3E, 4B–4C, 4E–4I, and 5B–5E of R21 MH121860–01A1, Figures 3, 5, 6B, 7, 8, 10B–10D, 11A–11C, and 11E–11F in R01 NS131809–01, Figure 8 of R01 NS133405–01, and Figures 3B–3C, 3E–3I, 4B–4I, 5, 9, 10B–10E, and 11–12 of R01 NS111162–01A1.

Respondent entered into a Voluntary Settlement Agreement (Agreement) and voluntarily agreed to the following:

(1) Respondent will have his research supervised for a period of five (5) years beginning on March 24, 2024 (the ''Supervision Period''). Prior to the submission of an application for PHS support for a research project on which Respondent's participation is proposed and prior to Respondent's participation in any capacity in PHS-supported research, Respondent will submit a plan for supervision of Respondent's duties to ORI for approval. The supervision plan must be designed to ensure the integrity of Respondent's research. Respondent will not participate in any PHS-supported research until such a supervision plan is approved by ORI. Respondent will comply with the agreed-upon supervision plan.

(2) The requirements for Respondent's supervision plan are as follows:

i. A committee of 2–3 senior faculty members at the institution who are familiar with Respondent's field of research, but not including Respondent's supervisor or collaborators, will provide oversight and guidance for a period of five (5) years from the effective date of the Agreement. The committee will review primary data from Respondent's laboratory on a quarterly basis and submit a report to ORI at six (6) month intervals setting forth the committee meeting dates and Respondent's compliance with appropriate research standards and confirming the integrity of Respondent's research.

ii. The committee will conduct an advance review of each application for PHS funds, or report, manuscript, or abstract involving PHS-supported research in which Respondent is involved. The review will include a discussion with Respondent of the primary data represented in those documents and will include a certification to ORI that the data presented in the proposed application, report, manuscript, or abstract are supported by the research record.

(3) During the Supervision Period, Respondent will ensure that any institution employing him submits, in conjunction with each application for PHS funds, or report, manuscript, or abstract involving PHS-supported research in which Respondent is involved, a certification to ORI that the data provided by Respondent are based on actual experiments or are otherwise legitimately derived and that the data, procedures, and methodology are accurately reported and not plagiarized in the application, report, manuscript, or abstract.

(4) If no supervision plan is provided to ORI, Respondent will provide certification to ORI at the conclusion of the Supervision Period that his participation was not proposed on a research project for which an application for PHS support was submitted and that he has not participated in any capacity in PHS-supported research.

(5) During the Supervision Period, Respondent will exclude himself voluntarily from serving in any advisory or consultant capacity to PHS including, but not limited to, service on any PHS advisory committee, board, and/or peer review committee.

(6) Respondent will request that the following paper be corrected or retracted:

- *Cell.* 2019 Oct 3;179(2):373–391.e27. doi: 10.1016/j.cell.2019.09.004.

Respondent will copy ORI and the Research Integrity Officer at UCSD on the correspondence with the journal.

Dated: April 4, 2024.

Sheila Garrity,

Director, Office of Research Integrity, Office of the Assistant Secretary for Health.

[FR Doc. 2024–07575 Filed 4–9–24; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery (NIH)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995 to provide opportunity for public comment on proposed data collection projects, National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Ms. Mikia P. Currie, Chief Project Clearance Officer, Office of Policy for Extramural Research Administration, 6705 Rockledge Drive, Suite 350, Bethesda, Maryland, 20892 or call non-toll-free number (301) 435–0941 or email your request, including your address to: *curriem@mail.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

SUPPLEMENTARY INFORMATION: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires: written comments and/or suggestions from the public and affected agencies are invited to address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Proposed Collection Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery, 0925–EXTENSION, exp., date 6/30/2024, National Institutes of Health (NIH).

Need and Use of Information Collection: We are not requesting changes for this submission. The proposed information collection provides a means to garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions. This information, however, is not statistical surveys that yield quantitative results, which can be generalized to the population of study. This feedback will provide information about NIH's customer or stakeholder perceptions, experiences, and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training, or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative, and actionable communications between NIH and its customers and stakeholders. It will also allow feedback

to contribute directly to the improvement of program management.

The solicitation of feedback will target areas such as: timeliness, appropriateness, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues with service delivery. Responses will be assessed to plan and inform efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from customers and stakeholders on NIH's services will be unavailable.

NIH will only submit a collection for approval under this generic clearance if it meets the following:

- The collections are voluntary;
- The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;
- The collections are non-controversial and do not raise issues of concern to other Federal agencies;
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;
- Personally Identifiable information is collected only to the extent necessary and is not retained;
- Information gathered will be used only internally for general service improvement and program management purposes and is not intended for release outside of the agency;
- Information gathered will not be used for the purpose of substantially informing influential policy decisions; and
- Information gathered will yield qualitative information; the collections will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study.

Feedback collected under this generic clearance provides useful information, but it does not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: the target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results. As a general matter, information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 49,333.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of collection	Number of respondents	Number of responses per respondent	Average time per response (in hours)	Total annual burden hours
Customer Satisfaction/Feedback Surveys	1,000	1	30/60	500
In-Depth Interviews (IDIs) or Small Discussion Groups	1,000	1	90/60	1,500
Focus Groups	1,000	1	90/60	1,500
Usability and Pilot Testing	150,000	1	5/60	12,500
Conference/Training—Pre-and Post-Surveys	100,000	2	10/60	33,333
Total	253,000	353,000	.....	49,333

Dated: April 3, 2024.

Lawrence A. Tabak,

Principal Deputy Director, National Institutes of Health.

[FR Doc. 2024–07547 Filed 4–9–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Hispanic Community Health Study—Study of Latinos (HCHS–SOL) Field Centers.

Date: May 2, 2024.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Rockledge I, 6705 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Susan Wohler Sunnarborg, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National, Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 208–Z, Bethesda, MD 20892, (301) 827–7987, *susan.sunnarborg@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: April 4, 2024.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–07543 Filed 4–9–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 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: Center for Scientific Review Special Emphasis Panel; Connective Tissue and Skin Sciences.

Date: April 30, 2024.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Robert Gersch, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 800K, Bethesda, MD 20817, (301) 867–5309, *robert.gersch@nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 4, 2024.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–07541 Filed 4–9–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[OMB Control Number 1651–0107]

Agency Information Collection Activities; Extension; Application for Waiver of Passport and/or Visa (DHS Form I–193)

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection (CBP) 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 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than June 10, 2024) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–0107 in the subject line and the agency name. Please submit written comments and/or suggestions in English. Please use the following method to submit comments:

Email. Submit comments to: *CBP_PRA@cbp.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/*.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Application for Waiver of Passport and/or Visa.

OMB Number: 1651–0107.

Form Number: (DHS Form I–193).

Current Actions: This submission will extend the authority without changing the annual burden previously reported or information collected.

Type of Review: Extension (without change).

Affected Public: Individuals.

Abstract: The data collected on DHS Form I–193, Application for Waiver of Passport and/or Visa, allows CBP to determine an applicant's identity, alienage, claim to legal status in the United States, and eligibility to enter the United States under 8 CFR 211.1(b)(3) and 212.1(g). DHS Form I–193 is an application submitted by a nonimmigrant alien seeking admission to the United States requesting a waiver of passport and/or visa requirements due to an unforeseen emergency. It is also an application submitted by an immigration alien returning to an unrelinquished lawful permanent residence in the United States after a temporary absence abroad requesting a waiver of documentary requirements for good cause. The waiver of the documentary requirements and the information collected on DHS Form I–193 is authorized by Sections 212(a)(7), 212(d)(4), and 212(k) of the Immigration and Nationality Act, as amended, and 8 CFR 211.1(b)(3) and 212.1(g). This form

is accessible at *https://www.uscis.gov/i-193.*

Type of Information Collection: Application for Waiver of Passport and/or Visa (DHS Form I–193).

Estimated Number of Respondents: 25,000.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 25,000.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 4,150.

Dated: April 5, 2024.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2024–07624 Filed 4–9–24; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No.: CISA–2023–0021]

Agency Information Collection Activities: Gratuitous Services Agreement, Volunteer Release and Hold Harmless, and Office for Bombing Prevention Interest Sign-up Sheet

AGENCY: Cybersecurity and Infrastructure Security Agency (CISA), Department of Homeland Security (DHS).

ACTION: 30-Day notice and request for comments; reinstatement without changes 1670–0031.

SUMMARY: The Office for Bombing Prevention (OBP) within Cybersecurity and Infrastructure Security Agency (CISA) will submit the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. CISA previously published this information collection request (ICR) in the **Federal Register** on August 29, 2023 for a 60-day public comment period. No comments were received by CISA. The purpose of this notice is to allow additional 30-days for public comments.

DATES: Comments are encouraged and will be accepted until May 10, 2024. Submissions received after the deadline for receiving comments may not be considered.

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.

The Office of Management and Budget is particularly interested in comments which:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including 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.

FOR FURTHER INFORMATION CONTACT: Douglas Delancey, 202–731–7689, *OBPExecSec@cisa.dhs.gov.*

SUPPLEMENTARY INFORMATION: Under the Homeland Security Presidential Directive-19: Combating Terrorist Use of Explosives in the United States, the Department of Homeland Security (DHS) was mandated to educate private sector security providers about IED threats, including tactics, techniques, and procedures relevant to their usage, so they are knowledgeable about terrorist use of explosives and contribute to a layered security approach.

The President's Policy Directive-17: Countering Improvised Explosive Devices (PPD–17) reaffirms the 2007 Strategy for Combating Terrorist Use of Explosives in the United States. It provides guidance to update and gives momentum to our ability to counter threats involving impro-vised explosive devices (IEDs). DHS was mandated to deliver standardized IED awareness and familiarization training for federal, state and local responders and public safety personnel.

Over the past 10 years, incidents involving IEDs has increased worldwide. This highlights the existing threat of IED attacks by terrorists, transnational criminal organizations, and individuals domestically that have radical political, environmental, or international viewpoints. IEDs have been used in the theater of war, mass transit systems overseas (London, Spain), in global aviation plots (December 2009), assignation attempts against political leaders, and other attempts here within the United States (Portland, Times Square, Boston Marathon 2013). They have also been used to threaten our ability in the secure movement of goods in accordance with the National Strategy for Global Supply Chain Security (print cartridge).

The Office for Bombing Prevention (OBP) must collect this information to effectively deliver training without concern that an individual who acts as a volunteer role player in support of official OBP training sustains an injury or death during the performance of his or her supporting role. Additionally, OBP must collect conference attendee information to properly identify key stakeholder segments and to ensure ongoing engagement and dissemination of OBP products to those who desire them.

The purpose of the Volunteer Participant Release of Liability Agreement is to collect necessary information in case an individual who acts as a volunteer role player in support of official OBP training sustains an injury or death during the performance of his or her supporting role. If legal action is taken, this information can serve as a ''hold harmless'' statement/agreement by the Government. In the unlikely event that an injury or death is sustained in the performance of support for training, this information will be used by CISA/ISD/OBP to protect against legal action by the volunteer or their family. If legal action is taken, this information can serve as a ''hold harmless'' statement/agreement by the Government.

The purpose of the Gratuitous Services Agreement is to establish that no monies, favors or other compensation will be given or received by either party involved. The information from the Gratuitous Services Agreement will be used by CISA/ISD/OBP in the event that questions arise regarding remuneration or payment for volunteer participation in training events.

The purpose of the OBP interest sign-up sheet is to collect basic contact information, on a voluntary basis, of those who attend the OBP conference booth and desire further engagement or additional products from OBP. The information is used by OBP to follow-up with the individuals who provide their contact information.

Additional considerations for these forms:

- The two training forms are best delivered as hard copies to volunteer

participants that attend the courses to ensure the right audiences are targeted in an environment where last-minute changes to the participant list are common. However, it is feasible that these forms will transition to a Learning Management System (LMS) enabling participants to complete online.

- The OBP interest sheet is a hard copy form laid on OBP's booth table for attendees to provide their contact information. There has been some consideration to shifting this to an electronic format, but current booth technology does not fully support this transition.

These forms do not negatively affect small businesses.

- Failure to collect this information could result in questions of liability and/or remuneration for volunteers in CISA/ISD/OBP and reluctance to seek volunteer involvement as a result. This would negatively affect the overall quality of the program in delivering these trainings to private sector security providers, federal, state and local responders, and public safety personnel.
- Failure to collect contact information from those who visit the OBP booth would greatly limit OBP's ability to stay engaged with or grow its stakeholder base or provide the most relevant products/services to those stakeholders.
- This collection does not include a pledge of confidentiality that is not supported by established authority in statute or regulation. This collection of information is covered by PIA DHS/ALL/PIA–006 DHS General Contact List.

This is a reinstatement of an existing collection. No changes were made to the collection instruments.

Analysis

Agency: Cybersecurity and Infrastructure Security Agency (CISA), Department of Homeland Security (DHS).

Title: Gratuitous Services Agreement, Volunteer Release and Hold Harmless, and OBP Interest Sign-up Sheet.

OMB Number: 1670–0031.

Frequency: Annually.

Affected Public: State, local, Tribal, and Territorial governments and private sector individuals.

Number of Respondents: 950.

Estimated Time per Respondent: 15 min.

Total Burden Hours: 160.

Total Annualized Respondent Cost: $6,812.

Total Annualized Respondent Out-of-Pocket Cost: $0.

Total Annualized Government Cost: $21,204.

Robert J. Costello,

Chief Information Officer, Department of Homeland Security, Cybersecurity and Infrastructure Security Agency.

[FR Doc. 2024–07257 Filed 4–9–24; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX24AC0000EXP00]

Advisory Committee for Science Quality and Integrity; Call for Nominations; Extension

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of extension.

SUMMARY: The Department of the Interior, U.S. Geological Survey (USGS), is seeking nominations for membership on the Advisory Committee for Science Quality and Integrity (Committee). The Committee will advise the Secretary of the Interior and the USGS Director on matters related to the responsibilities of the USGS Office of Science Quality and Integrity (OSQI) including monitoring and enhancing the integrity, quality, and health of all USGS science. This is a 30-day extension of the call for nominations published in the **Federal Register** on February 26, 2024.

DATES: The deadline for submission of nominations for membership on the Committee published February 26, 2024, at 89 FR 14086 is extended. Nominations for membership on the Committee must be received via email no later than May 10, 2024.

ADDRESSES: You may submit nominations by any of the following methods: Mail nominations to Joanne Taylor, U.S. Geological Survey, Office of Science Quality and Integrity, 12201 Sunrise Valley Drive, Mailstop 911, Reston, VA 20192; or email nominations to *jctaylor@usgs.gov.*

FOR FURTHER INFORMATION CONTACT: Joanne Taylor, by U.S. mail at the U.S. Geological Survey, 12201 Sunrise Valley Drive, Mailstop 911, Reston, VA 20192; by telephone at 703–648–6837; or by email at *jctaylor@usgs.gov.*

SUPPLEMENTARY INFORMATION: The Committee is established under the authority of the Secretary of the Interior (Secretary) and regulated by the Federal Advisory Committee Act, as amended (5 U.S.C. ch. 10). The Committee's duties are strictly advisory and will include advising on: (a) Identification of key scientific quality and integrity processes to advance the USGS mission; (b) Effective mechanisms for engaging the next-generation USGS workforce and others through the Youth and Education in Science (YES) program and with other Federal agencies in STEM and underserved communities; (c) The nature and effectiveness of mechanisms to provide oversight of science quality within USGS laboratories; and (d) Mechanisms that may be employed by the USGS to ensure high standards of science quality and integrity in its programs and products.

The Committee will meet approximately one to two times per year. The Committee will consist of no more than 15 members appointed by the Secretary who represent the diversity of this nation's constituencies, and include the following interests:

- Local and State governments;
- Non-governmental organizations;
- Native American, Native Alaskan, and Native Hawaiian organizations, including representatives from Tribal governments and Tribal colleges;
- Academia; and
- Other stakeholders and sectors, including private industry, that make use of USGS science including, but not limited to, areas including laboratory sciences, natural resource managers, natural hazards protections, and wildlife organizations.

The Committee may include scientific experts and will include rotating representation from one or more local, Tribal, State, regional, and/or national organizations.

Nominations should include a resume providing an adequate description of the nominee's qualifications, including information that would enable DOI to make an informed decision regarding meeting the membership requirements of the Committee and to permit a potential member to be contacted.

Members of the Committee serve without compensation. However, while away from their homes or regular places of business, Committee and subcommittee members engaged in Committee or subcommittee business that the DFO approves may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by 5 U.S.C. 5703, in the same manner as persons employed intermittently in Federal Government service.

The original call for nominations was published in the **Federal Register** (89 FR 14086) on February 26, 2024, with a 45-day nomination period ending April 11, 2024. This notice provides additional time for nominations (see **DATES**, above).

Authority: 5 U.S.C. ch. 10.

Craig R. Robinson,

Director, Office of Science Quality & Integrity, U.S. Geological Survey.

[FR Doc. 2024–07581 Filed 4–9–24; 8:45 am]

BILLING CODE 4388–11–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[245D0102DM; DS62470000; DMSN000000.000000; OMB Control Number 1085–0001]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Source Directory of American Indian and Alaska Native Owned and Operated Arts and Crafts

AGENCY: Office of the Secretary

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Department of the Interior, Office of the Secretary, is proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before May 10, 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 Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments to Jeffrey Parrillo, Departmental Information Collection Clearance Officer, 1849 C Street NW, Washington, DC 20240; or by email to *DOI-PRA@ios.doi.gov.* Please reference OMB Control Number 1085–0001 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Jeffrey Parrillo, Departmental Information Collection Clearance Officer, 1849 C Street NW, Washington, DC 20240; or by email to *DOI-PRA@ios.doi.gov,* or by telephone at 202–208–7072. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on Wednesday, November 15, 2023, 88 FR 78380. No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The Source Directory of American Indian and Alaska Native Owned and Operated Arts and Crafts Businesses is a program of the Indian Arts and Crafts Board that promotes American Indian and Alaska Native arts and crafts. The Source Directory is a listing of American Indian and Alaska Native owned and operated arts and crafts businesses that may be accessed by the public on the Indian Arts and Crafts Board's website *http://www.doi.gov/iacb.* The service of being listed in this directory is provided free-of-charge to members of federally recognized tribes. Businesses listed in the Source Directory include American Indian and Alaska Native artists and craftspeople, cooperatives, tribal arts and crafts enterprises, businesses privately owned and operated by American Indian and Alaska Native artists, designers, and craftspeople, and businesses privately owned-and-operated by American Indian and Alaska Native merchants who retail and/or wholesale authentic Indian and Alaska Native arts and crafts. Business listings in the Source Directory are arranged alphabetically by State. The Director of the IACB uses this information to determine whether an individual or business applying to be listed in the Source Directory meets the requirements for listing. The approved application will be printed in the Source Directory. The Source Directory is updated as needed to include new businesses and to update existing information. Applicants or current enrollees submit Form DI–5001, ''Source Directory Business Listing Application'' which collects the following information:

Type of listing they are applying for:

- New listing;
- Renewal/changes;
- Individual; or
- Group.
- Business name;
- Manager and owner name, along with Tribal affiliation; and
- Tribal or group affiliation of signer.

Title of Collection: Source Directory of American Indian and Alaska Native Owned and Operated Arts and Crafts Businesses.

OMB Control Number: 1085–0001.

Form Number: DI–5001.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Individuals/households, businesses.

Total Estimated Number of Annual Respondents: 100.

Total Estimated Number of Annual Responses: 100.

Estimated Completion Time per Response: 15 minutes.

Total Estimated Number of Annual Burden Hours: 25 hours.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Meridith Stanton,

Director.

[FR Doc. 2024–07523 Filed 4–9–24; 8:45 am]

BILLING CODE 4334–63–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–739 (Fifth Review)]

Clad Steel Plate From Japan

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that revocation of the antidumping duty order on clad steel plate from Japan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted this review on November 1, 2023 (88 FR 75026) and determined on February 5, 2024 that it would conduct an expedited review (89 FR 13375, February 22, 2024).

The Commission made this determination pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determination in this review on April 5, 2024. The views of the Commission are contained in USITC Publication 5502 (April 2024), entitled *Clad Steel Plate from Japan: Investigation No. 731–TA–739 (Fifth Review).*

By order of the Commission.

Issued: April 5, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–07608 Filed 4–9–24; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

INTERNATIONAL TRADE COMMISSION

[USITC SE–24–015]

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: April 16, 2024 at 9:30 a.m.

PLACE: Room 101, 500 E Street SW, Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: none.
2. Minutes.
3. Ratification List.
4. Commission vote on Inv. No. 731–TA–1626 (Final) (Paper Shopping Bags from Turkey). The Commission currently is scheduled to complete and file its determination and views of the Commission on May 2, 2024.
5. Outstanding action jackets: none.

CONTACT PERSON FOR MORE INFORMATION: Sharon Bellamy, Supervisory Hearings and Information Officer, 202–205–2000.

The Commission is holding the meeting under the Government in the Sunshine Act, 5 U.S.C. 552(b). In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: April 8, 2024.

Sharon Bellamy,

Supervisory Hearings and Information Officer.

[FR Doc. 2024–07665 Filed 4–8–24; 11:15 am]

BILLING CODE 7020–02–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Committee on Rules of Practice and Procedure; Meeting of the Judicial Conference

AGENCY: Judicial Conference of the United States.

ACTION: Committee on Rules of Practice and Procedure; Notice of open meeting.

SUMMARY: The Committee on Rules of Practice and Procedure will hold a meeting in a hybrid format with remote attendance options on June 4, 2024 in Washington, DC. The meeting is open to the public for observation but not participation. An agenda and supporting materials will be posted at least 7 days in advance of the meeting at: *https://www.uscourts.gov/rules-policies/records-and-archives-rules-committees/agenda-books.*

DATES: June 4, 2024.

FOR FURTHER INFORMATION CONTACT: H. Thomas Byron III, Esq., Chief Counsel, Rules Committee Staff, Administrative Office of the U.S. Courts, Thurgood Marshall Federal Judiciary Building, One Columbus Circle NE, Suite 7–300, Washington, DC 20544, Phone (202) 502–1820, *RulesCommittee_Secretary@ao.uscourts.gov.*

(Authority: 28 U.S.C. 2073.)

Dated: April 5, 2024.

Shelly L. Cox,

Management Analyst, Rules Committee Staff.

[FR Doc. 2024–07588 Filed 4–9–24; 8:45 am]

BILLING CODE 2210–55–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[OMB Control No. 1219–0066]

Proposed Extension of Information Collection; Testing, Evaluation, and Approval of Mining Products

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor (DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information, in accordance with the Paperwork Reduction Act of 1995. 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. The Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection for Testing, Evaluation, and Approval of Mining Products, 30 CFR subchapter B—parts 6 through 36.

DATES: All comments must be received on or before June 10, 2024.

ADDRESSES: Comments concerning the information collection requirements of

this notice may be sent by any of the methods listed below. Please note that late comments received after the deadline will not be considered.

- *Federal E-Rulemaking Portal: https://www.regulations.gov.* Follow the on-line instructions for submitting comments for docket number MSHA–2024–0002.
- *Mail/Hand Delivery:* DOL–MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, 4th Floor West, Arlington, VA 22202–5452. 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.
- MSHA will post all comments as well as any attachments, except for information submitted and marked as confidential, in the docket at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances, MSHA, at *MSHA.information.collections@dol.gov* (email); (202) 693–9440 (voice); or (202) 693–9441 (facsimile). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act) as amended, 30 U.S.C. 813(h), authorizes Mine Safety and Health Administration (MSHA) to collect information necessary to carry out its duty in protecting the safety and health of miners. Further, section 101(a) of the Mine Act, 30 U.S.C. 811(a), authorizes the Secretary of Labor (Secretary) to develop, promulgate, and revise as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal, metal and nonmetal mines.

MSHA is responsible for the inspection, testing, approval and certification, and quality control of mining equipment and components, materials, instruments, and explosives used in both underground and surface coal, metal, and nonmetal mines. 30 CFR 6 through 36 contain procedures and specifications by which manufacturers may apply for and have equipment approved as ''permissible'' for use in mines.

Under 30 CFR 14.4, 15.4, 18.6, 18.81, 18.82, 18.93, 18.94, 19.3, 19.10, 20.3, 20.11, 22.4, 22.8, 23.3, 23.10, 27.4, 27.6, 28.10, 33.6, 35.6, and 36.6, applicants seeking product approval must submit an application that includes all the specifications, drawings, and other information needed for the approval. This information is necessary for MSHA to evaluate, test, and possibly approve products that do not cause a fire or explosion risk in a mine. Some products have separate requirements for applications for extensions of approvals to cover proposed changes: 30 CFR 18.15, 19.13, 20.14, 22.11, 23.14, 27.11, 28.25, 33.12, 35.12, and 36.12. For extensions of approvals, the applicant is not required to resubmit documentation that is duplicative or was previously submitted for the approval. Only information related to changes in the previously approved product is required, avoiding unnecessary paperwork.

Under 30 CFR 7.3, the general procedures and requirements provides what an applicant must meet for MSHA approval of a product. The application procedures apply to the original application, an application for similar products, and an extension of approval. The technical documents required for different products is specified in 30 CFR 7.23, 7.43, 7.63, 7.83, 7.97, 7.303, 7.403, and 7.503.

Under 30 CFR 15.8(b), the approval holder must report any knowledge of explosives distributed that do not meet the specifications of the approval. Under 30 CFR 28.10(d), 28.30, and 28.31, MSHA requires the applicant to submit a quality control plan for approval to ensure that each fuse is manufactured to have the short-circuit protection as required by the approval.

Under 30 CFR 18.53(h), an applicant must submit an ''available fault current'' study to MSHA to justify circuit breaker settings to provide protection for the size and length of the longwall motor, shearer, and trailing cables used.

For certain products which are dependent on proper use and maintenance, MSHA requires the manufacturers to provide additional information on the approval marking or instructions to be included with the product. Under 30 CFR 23.7(e), 23.12(a)(2), 28.23, and 35.10, MSHA requires this additional information for the proper use of telephone and signaling systems, fuses, and hydraulic fluids.

Under 30 CFR 7.4, 7.27(a)(8), 7.28(a)(7), 7.46(a)(3), 7.47(a)(6), 7.48(a)(3), 7.407(a)(11) and (a)(12), and 7.408(a)(7) and (a)(8), records of test results and procedures must be retained for 3 years. Under 30 CFR 7.6, applicants must maintain records on the distribution of each unit with an approval marking. This is necessary so that deficient products which may present a hazard to miners can be traced and withdrawn from use until the appropriate corrective action may be taken. Under 30 CFR 7.7(d), applicants must report to MSHA any knowledge of a product distributed that is not in accord with the approval.

Under 30 CFR 7.51, 7.71, 7.108, and 7.311, the applicant must include an approval checklist with each product sold. These checklists are important because they include a description of what is necessary for users to maintain products in approved condition.

Under 30 CFR 7.49, 7.69(c), (e), and (f), 7.90, 7.105, 7.306(d), 7.309, and 7.409, additional information for the proper use and maintenance must be provided. Certain products require more information for proper use and maintenance; therefore, MSHA requires the manufacturers to provide additional information on the approval marking or instructions to be included with the product.

Under 30 CFR 75.1732(a), mine operators must equip continuous mining machines with proximity detection systems and provide miners with miner-wearable components. Proximity detection systems must be approved by MSHA under 30 CFR 18.

II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed information collection related to Testing, Evaluation, and Approval of Mining Products, 30 CFR subchapter B—parts 6 through 36. MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility;
- Evaluate the accuracy of MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

The information collection request will be available on *https://www.regulations.gov.* MSHA cautions the commenter against providing any information in the submission that should not be publicly disclosed. Full comments, including personal information provided, will be made

available on *https://www.regulations.gov* and *https://www.reginfo.gov.*

The public may also examine publicly available documents at DOL–MSHA, Office of Standards, Regulations and Variances, 201 12th Street South, 4th Floor West, Arlington, VA 22202–5452. Sign in at the receptionist's desk on the 4th floor via the West elevator. 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.

III. Current Actions

This information collection request concerns provisions for Testing, Evaluation, and Approval of Mining Products, 30 CFR subchapter B—parts 6 through 36. MSHA has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request (including MSHA Form 2000–38) from the previous information collection request.

Type of Review: Extension, without change, of a currently approved collection.

Agency: Mine Safety and Health Administration.

OMB Number: 1219–0066.

Affected Public: Business or other for-profit.

Number of Annual Respondents: 83.

Frequency: On occasion.

Number of Annual Responses: 248.

Annual Time Burden: 2,539 hours.

Annual Burden Costs: $211,633.

Annual Other Burden Cost: $2,184,442.

MSHA Form: MSHA Form 2000–38, Electrically Operated Mining Equipment U.S. Department of Labor Field Approval Application (Coal Operator).

Comments submitted in response to this notice will be summarized in the request for Office of Management and Budget approval of the proposed information collection request; they will become a matter of public record and will be available at *https://www.reginfo.gov.*

Song-ae Aromie Noe,

Mine Safety and Health Administration, Certifying Officer.

[FR Doc. 2024–07564 Filed 4–9–24; 8:45 am]

BILLING CODE 4510–43–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–025; NRC–2024–0071]

Southern Nuclear Operating Company; Vogtle Electric Generating Plant, Unit 3; License Amendment Application

AGENCY: Nuclear Regulatory Commission.

ACTION: Opportunity to comment, request a hearing, and petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Combined License No. NPF–91, issued to Southern Nuclear Operating Company (SNC, the licensee), for operation of the Vogtle Electric Generating Plant (Vogtle), Unit 3. The proposed amendment would change the ventilation filter testing program testing frequency for Vogtle Nuclear Generating Plant, Unit 3.

DATES: Submit comments by May 10, 2024. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Requests for a hearing or petition for leave to intervene must be filed by June 10, 2024.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website.

- *Federal rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2024–0071. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: John G. Lamb, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–3100; email: *John.Lamb@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2024–0071 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2024–0071.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The license amendment request to change the ventilation filter testing program testing frequency for Vogtle Nuclear Generating Plant, Unit 3, is available in ADAMS under Accession No. ML24095A354.
- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2024–0071 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment

submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Introduction

The NRC is considering issuance of an amendment to Combined License No. NPF–91, issued to SNC, for operation of Vogtle, Unit 3, located in Burke County, Georgia. By letter dated April 4, 2024, SNC submitted a license amendment request to change Technical Specification (TS) 5.5.13, ''Ventilation Filter Testing Program (VFTP),'' at Vogtle, Unit 3. SNC proposes to provide an exception to the 24-month testing frequency to defer the next required performance until prior to startup from the first refueling outage. The licensee proposes that this exception would apply to in-place penetration and system bypass testing of the high efficiency particulate air (HEPA) filter, in-place penetration and system bypass testing of the charcoal adsorber, and pressure drop testing across the HEPA filter, the charcoal adsorber, and the post filter, as specified in TS 5.5.13.a.1, 5.5.13.a.2, and 5.5.13.a.4, respectively.

Before any issuance of the proposed license amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and NRC's regulations.

The NRC has made a proposed determination that the license amendment request involves no significant hazards consideration (NSHC). Under the NRC's regulations in section 50.92 of title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of NSHC, which is presented as follows:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change relaxes the time allowed to perform a Surveillance. The time between Surveillances is not an initiator to any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment being tested is still required to be operable and capable of performing the accident mitigation function assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly affected.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The relaxed time allowed to perform a Surveillance does not result in a significant reduction in the margin of safety. As supported by the historical data, the likely outcome of any Surveillance is verification that the requirement is met. Failure to perform a Surveillance within the currently prescribed Frequency does not cause equipment to become inoperable. The only effect of the additional time allowed to perform the Surveillance on the margin of safety is the extension of the time until inoperable equipment is discovered to be inoperable by the missed Surveillance. Balancing the rare occurrence of an undiscovered inoperability against the actual risk of manipulating the plant equipment to perform the Surveillance, leads to a conclusion of enhanced plant safety margins. In addition, the diesel-backed normal ventilation system can perform the safety function of the filtration train should there be an undiscovered inoperability. Thus, there is confidence that plant safety margins are maintained.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the license amendment request involves NSHC.

The NRC is seeking public comments on this proposed determination that the license amendment request involves NSHC. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice (the notice period). However, if circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the notice period, provided that its final determination is that the amendment involves NSHC. The final determination will consider all public and State comments received. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

III. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any person (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult 10 CFR 2.309. If a petition is filed, the presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

Petitions must be filed no later than 60 days from the date of publication of this notice in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii).

If a hearing is requested and the Commission has not made a final determination on the issue of NSHC, the Commission will make a final determination on the issue of NSHC, which will serve to establish when the hearing is held. If the final determination is that the amendment request involves NSHC, the Commission may issue the amendment and make it immediately effective, notwithstanding

the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h) no later than 60 days from the date of publication of this notice. Alternatively, a State, local governmental body, Federally recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

For information about filing a petition and about participation by a person not a party under 10 CFR 2.315, see ADAMS Accession No. ML20340A053 (*https://adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber=ML20340A053*) and on the NRC's public website at *https://www.nrc.gov/about-nrc/regulatory/adjudicatory/hearing.html#participate.*

IV. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including documents filed by an interested State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof that requests to participate under 10 CFR 2.315(c), must be filed in accordance with 10 CFR 2.302. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases, to mail copies on electronic storage media, unless an exemption permitting an alternative filing method, as further discussed, is granted. Detailed guidance on electronic submissions is located in the ''Guidance for Electronic Submissions to the NRC'' (ADAMS Accession No. ML13031A056) and on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html.*

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *Hearing.Docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* After a digital ID certificate is obtained and a docket created, the participant must submit adjudicatory documents in Portable Document Format. Guidance on submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. ET on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email confirming receipt of the document. The E-Filing system also distributes an email that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed to obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., ET, Monday through Friday, except Federal holidays.

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted in accordance with 10 CFR 2.302(b)–(d). Participants filing adjudicatory documents in this manner are responsible for serving their documents on all other participants. Participants granted an exemption under 10 CFR 2.302(g)(2) must still meet the electronic formatting requirement in 10 CFR 2.302(g)(1), unless the participant also seeks and is granted an exemption from 10 CFR 2.302(g)(1).

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is publicly available at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the presiding officer. If you do not have an NRC-issued digital ID certificate as previously described, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information such as social security numbers, home addresses, or personal phone numbers in their filings unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants should not include copyrighted materials in their submission.

For further details with respect to this action, see the application for license amendment dated April 4, 2024 (ADAMS Accession No. ML24095A354).

Attorney for licensee: Millicent Ronnlund, Vice President and General Counsel, P.O. Box 1295, Birmingham, AL 35201–1295.

NRC Branch Chief: Michael Markley.

Dated: April 5, 2024.

For the Nuclear Regulatory Commission.

John Lamb,

Senior Project Manager, Plant Licensing Branch II–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2024–07611 Filed 4–9–24; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2023–0126]

Information Collection: NRC Form 354, Data Report on Spouse

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, NRC Form 354, ''Data Report on Spouse.''

DATES: Submit comments by May 10, 2024. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: David Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2023–0126 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2023–0126.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession No. ML23227A174. The supporting statement is available in ADAMS under Accession No. ML23355A135.
- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *https://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, NRC Form 354, ''Data Report on Spouse.'' The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on October 6, 2023, 88 FR 69675.

1. *The title of the information collection:* NRC Form 354, Data Report on Spouse.
2. *OMB approval number:* 3150–0026.
3. *Type of submission:* Extension.
4. *The form number, if applicable:* NRC Form 354.
5. *How often the collection is required or requested:* On Occasion.
6. *Who will be required or asked to respond:* NRC contractors, licensees, applicants, and others (*e.g.,* intervener's) who marry or cohabitate after completing the Personnel Security Forms, or after having been granted an NRC access authorization or employment clearance.
7. *The estimated number of annual responses:* 50.
8. *The estimated number of annual respondents:* 50.
9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 12.5.
10. *Abstract:* NRC Form 354 must be completed by NRC contractors, licensees, applicants who marry or cohabitate after completing the Personnel Security Forms, or after having been granted an NRC access authorization or employment clearance. Form 354 identifies the respondent, the marriage/cohabitation, and data on the spouse/cohabitant and spouse's/cohabitant's parents. This information permits the NRC to make initial security determinations and to assure there is no increased risk to the common defense and security.

Dated: April 4, 2024.

For the Nuclear Regulatory Commission.

David Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2024–07544 Filed 4–9–24; 8:45 am]

BILLING CODE 7590–01–P

PEACE CORPS

Information Collection Request; Submission for OMB Review

AGENCY: Peace Corps.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Peace Corps will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

DATES: Submit comments on or before June 10, 2024.

ADDRESSES: Comments should be addressed to James Olin, FOIA/Privacy Act Officer. James Olin can be contacted by phone 202–692–2507 or email at *pcfr@peacecorps.gov.* Email comments must be made in text and not in attachments.

FOR FURTHER INFORMATION CONTACT: James Olin, Peace Corps, at *pcfr@peacecorps.gov* or by telephone at (202) 692–2507.

SUPPLEMENTARY INFORMATION:

Title: Individual Specific Medical Evaluation Forms (15).

OMB Control Number: 0420–0550.

Type of Request: Revision/New.

Affected Public: Individuals/Physicians.

Respondents Obligation to Reply: Voluntary.

Respondents: Potential and current volunteers

Burden to the Public:

• Asthma Evaluation Form.

(a) *Estimated number of Applicants/physicians:* 700/700
(b) *Frequency of response:* one time
(c) *Estimated average burden per response:* 75 minutes/30 minutes
(d) *Estimated total reporting burden:* 875 hours/350 hours
(e) *Estimated annual cost to respondents:* Indeterminate

General Description of Collection: When an Applicant reports on the Health History Form any history of asthma, he or she will be provided an Asthma Evaluation Form for the treating physician to complete. The Asthma Evaluation Form asks for the physician to document the Applicant's condition of asthma, including any asthma symptoms, triggers, treatments, or limitations or restrictions due to the condition. This form will be used as the basis for an individualized determination as to whether the Applicant will, with reasonable accommodation, be able to perform the essential functions of a Peace Corps Volunteer and complete a tour of service without unreasonable disruption due to health problems. This form will also be used to determine the type of accommodation that may be needed, such as placement of the Applicant within reasonable proximity to a hospital in case treatment is needed for a severe asthma attack.

• Diabetes Diagnosis Form.

(a) *Estimated number of Applicants/physicians:* 55/55
(b) *Frequency of response:* one time
(c) *Estimated average burden per response:* 75 minutes/30 minutes
(d) *Estimated total reporting burden:* 69 hours/28 hours
(e) *Estimated annual cost to respondents:* Indeterminate

General Description of Collection: When an Applicant reports the condition of diabetes Type 1 on the Health History Form, the Applicant will be provided a Diabetes Diagnosis Form for the treating physician to complete. In certain cases, the Applicant may also be asked to have the treating physician complete a Diabetes Diagnosis Form if the Applicant reports the condition of diabetes Type 2 on the Health History Form. The Diabetes Diagnosis Form asks the physician to document the diabetes diagnosis, etiology, possible complications, and treatment. This form will be used as the basis for an individualized determination as to whether the Applicant will, with reasonable accommodation, be able to perform the essential functions of a Peace Corps Volunteer assignment and complete a tour of service without unreasonable disruption due to health problems. This form will also be used to determine the type of accommodation that may be needed, such as placement of an Applicant who requires the use of insulin in order to ensure that adequate insulin storage facilities are available at the Applicant's site.

• Transfer of Care—Request for Information Form.

(a) *Estimated number of Applicants/physicians:* 1,270/1,270
(b) *Frequency of response:* one time
(c) *Estimated average burden per response:* 75 minutes/30 minutes
(d) *Estimated total reporting burden:* 1,588 hours/635 hours
(e) *Estimated annual cost to respondents:* Indeterminate

General Description of Collection: When an Applicant reports on the Health History Form a medical condition of significant severity (other than one covered by another form), he or she may be provided the Transfer of Care—Request for Information Form for the treating physician to complete. The Transfer of Care—Request for Information Form may also be provided to an Applicant whose responses on the Health History Form indicate that the Applicant may have an unstable medical condition that requires ongoing treatment. The Transfer of Care—Request for Information Form asks the physician to document the diagnosis, current treatment, physical limitations and the likelihood of significant progression of the condition over the next three years. This form will be used as the basis for an individualized determination as to whether the Applicant will, with reasonable accommodation, be able to perform the essential functions of a Peace Corps Volunteer assignment and complete a tour of service without unreasonable disruption due to health problems. This form will also be used to determine the type of accommodation (*e.g.,* avoidance of high altitudes or proximity to a hospital)that may be needed to manage the Applicant's medical condition.

• Mental Health Current Evaluation and Treatment Summary Form.

(a) *Estimated number of Applicants/professional:* 1,221/1,221
(b) *Frequency of response:* one time
(c) *Estimated average burden per response:* 105 minutes/60 minutes
(d) *Estimated total reporting burden:* 2,137 hours/1,221 hours
(e) *Estimated annual cost to respondents:* Indeterminate

General Description of Collection: The Mental Health Current Evaluation Form will be used when an Applicant reports on the Health History Form a history of certain serious mental health conditions, such as bipolar disorder, schizophrenia, mental health hospitalization, attempted suicide or cutting, or treatments or medications related to these conditions. In these cases, an Applicant will be provided a Mental Health Current Evaluation and Treatment Summary Form for a licensed mental health counselor, psychiatrist or psychologist to complete. The Mental Health Current Evaluation and Treatment Summary Form asks the counselor, psychiatrist or psychologist to document the dates and frequency of therapy sessions, clinical diagnoses, symptoms, course of treatment, psychotropic medications, mental health history, level of functioning, prognosis, risk of exacerbation or recurrence while overseas, recommendations for follow up and any concerns that would prevent the Applicant from completing 27 months of service without unreasonable disruption. A current mental health evaluation might be needed if information on the condition is out-

dated or previous reports on the condition do not provide enough information to adequately assess the current status of the condition.This form will be used as the basis for an individualized determination as to whether the Applicant will, with reasonable accommodation, be able to perform the essential functions of a Peace Corps Volunteer and complete a tour of service without unreasonable disruption due to health problems. This form will also be used to determine the type of accommodation that may be needed, such as placement of the Applicant in a country with appropriate mental health support.

• Functional Abilities Evaluation Form.

(a) *Estimated number of Applicants/professional:* 300/300
(b) *Frequency of response:* one time
(c) *Estimated average burden per response:* 90 minutes/45 minutes
(d) *Estimated total reporting burden:* 390 hours/225 hours
(e) *Estimated annual cost to respondents:* Indeterminate

General Description of Collection: When an Applicant reports on the Health History Form a functional ability limitation he or she will be provided this form to determine the type of accommodation and/or placement program support (*e.g.,* proximity to program site, support support devices) that may be needed to manage the Applicant's medical condition.. This form will be used as the basis for an individualized determination as to whether the Applicant will, with reasonable accommodation, be able to perform the essential functions of a Peace Corps Volunteer assignment and complete a tour of service without unreasonable disruption due to health problems.

• Eating Disorder Treatment Summary Form.

(a) *Estimated number of Applicants/physicians:* 282/282
(b) *Frequency of response:* one time
(c) *Estimated average burden per response:* 105 minutes/60 minutes
(d) *Estimated total reporting burden:* 494 hours/282 hours
(e) *Estimated annual cost to respondents:* Indeterminate

General Description of Collection: The Eating Disorder Treatment Summary will be used when an Applicant reports a past or current eating disorder diagnosis in the Health History Form. In these cases the Applicant is provided an Eating Disorder Treatment Summary Form for a mental health specialist, preferably with eating disorder training, to complete. The Eating Disorder Treatment Summary Form asks the mental health specialist to document the dates and frequency of therapy sessions, clinical diagnoses, presenting problems and precipitating factors, symptoms, Applicant's weight over the past three years, relevant family history, course of treatment, psychotropic medications, mental health history inclusive of eating disorder behaviors, level of functioning, prognosis, risk of recurrence in a stressful overseas environment, recommendations for follow up, and any concerns that would prevent the Applicant from completing 27 months of service without unreasonable disruption due to the diagnosis. This form will be used as the basis for an individualized determination as to whether the Applicant will, with reasonable accommodation, be able to perform the essential functions of a Peace Corps Volunteer assignment and complete a tour of service without unreasonable disruption due to health problems. This form will also be used to determine the type of accommodation that may be needed, such as placement of the Applicant in a country with appropriate mental health support.

• Substance-Related and Addictive Disorders Current Evaluation Form.

(a) *Estimated number of Applicants/specialist:* 373/373
(b) *Frequency of response:* one time
(c) *Estimated average burden per response:* 165 minutes/60 minutes
(d) *Estimated total reporting burden:* 1,026 hours/373 hours
(e) *Estimated annual cost to respondents:* Indeterminate

General Description of Collection: The Alcohol/Substance Abuse Current Evaluation Form is used when an Applicant reports in the Health History Form a history of substance abuse (*i.e.,* alcohol or drug related problems such as blackouts, daily or heavy drinking patterns or the misuse of illegal or prescription drugs) and that this substance abuse affects the Applicant's daily living or that the Applicant has ongoing symptoms of substance abuse. In these cases, the Applicant is provided an Substance-Related and Addictive Disorders Current Evaluation Form for a substance abuse specialist to complete. The Substance-Related and Addictive Disorders Current Evaluation Form asks the substance abuse specialist to document the history of alcohol/substance abuse, dates and frequency of any therapy sessions, which alcohol/substance abuse assessment tools were administered, mental health diagnoses, psychotropic medications, self harm behavior, current clinical assessment of alcohol/substance use, clinical observations, risk of recurrence in a stressful overseas environment, recommendations for follow up, and any concerns that would prevent the Applicant from completing a tour of service without unreasonable disruption due to the diagnosis. This form will be used as the basis for an individualized determination as to whether the Applicant will, with reasonable accommodation, be able to perform the essential functions of a Peace Corps Volunteer and complete a tour of service without unreasonable disruption due to health problems. This form will also be used to determine the type of accommodation that may be needed, such as placement of the Applicant in a country with appropriate sobriety support or counseling support.

• Mammogram Waiver Form.

(a) *Estimated number of Applicants:* 148
(b) *Frequency of response:* one time
(c) *Estimated average burden per response:* 105 minutes
(d) *Estimated total reporting burden:* 259 hours
(e) *Estimated annual cost to respondents:* Indeterminate

General Description of Collection: The Mammogram Form is used for all Applicants who have female breasts and will be 50 years of age or older during service who wish to waive routine mammogram screening during service. If an Applicant waives routine mammogram screening during service, the Applicant's physician is asked to complete this form in order to make a general assessment of the Applicant's statistical breast cancer risk and discussed the results with the Applicant including the potential adverse health consequence of foregoing screening mammography.

• Cervical Cancer Screening Form.

(a) *Estimated number of Applicants:* 3,600/3,600
(b) *Frequency of response:* one time
(c) *Estimated average burden per response:* 40 minutes/30 minutes
(d) *Estimated total reporting burden:* 2,400 hours/1,800 hours
(e) *Estimated annual cost to respondents:* Indeterminate

General Description of Collection: The Cervical Cancer Screening Form is used with all Applicants with a cervix. Prior to medical clearance, female Applicants are required to submit a current cervical cancer screening examination and Pap cytology report based the American Society for Colploscopy and Cervical Pathology (ASCCP) screening time-line for their age and Pap history. This form assists the Peace Corps in determining whether an Applicant with mildly

abnormal Pap history will need to be placed in a country with appropriate support.

• Colon Cancer Screening Form.

(a) *Estimated number of Applicants:* 575
(b) *Frequency of response:* one time
(c) *Estimated average burden per response:* 60 minutes–165 minutes
(d) *Estimated total reporting burden:* 575 hours–1,581 hours
(e) *Estimated annual cost to respondents:* Indeterminate

General Description of Collection: The Colon Cancer Screening Form is used with all Applicants who are 50 years of age or older to provide the Peace Corps with the results of the Applicant's latest colon cancer screening. Any testing deemed appropriate by the American Cancer Society is accepted. The Peace Corps uses the information in the Colon Cancer Screening Form to determine if the Applicant currently has colon cancer. Additional instructions are included pertaining to abnormal test results.

• ECG Form.

(a) *Estimated number of Applicants/physicians:* 575/575
(b) *Frequency of response:* one time
(c) *Estimated average burden per response:* 25 minutes/15 minutes
(d) *Estimated total reporting burden:* 240 hours/144 hours
(e) *Estimated annual cost to respondents:* Indeterminate

General Description of Collection: The ECG/EKG Form is used with all Applicants who are 50 years of age or older to provide the Peace Corps with the results of an electrocardiogram. The Peace Corps uses the information in the electrocardiogram to assess whether the Applicant has any cardiac abnormalities that might affect the Applicant's service. Additional instructions are included pertaining to abnormal test results. The electrocardiogram is performed as part of the Applicant's physical examination.

• Reactive Tuberculin Test Evaluation Form.

(a) *Estimated number of Applicants/physicians:* 392/392
(b) *Frequency of response:* one time
(c) *Estimated average burden per response:* 75–105 minutes/30 minutes
(d) *Estimated total reporting burden:* 490–686 hours/196 hours
(e) *Estimated annual cost to respondents:* Indeterminate

General Description of Collection: The Reactive Tuberculin Test Evaluation Form is used when an Applicant reports a history of treatment for active tuberculosis or a history of a positive tuberculosis (TB) test on their Health History Form or if a positive TB test result is noted as a component of the Applicant's physical examination findings. In these cases, the Applicant is provided a Reactive Tuberculin Test Evaluation Form for the treating physician to complete. The treating physician is asked to document the type and date of a current TB test, TB test history, diagnostic tests if indicated, treatment history, risk assessment for developing active TB, current TB symptoms, and recommendations for further evaluation and treatment. In the case of a positive result on the TB test, a chest x-ray may be required, along with treatment for latent TB.

• Insulin Dependent Supplemental Documentation Form.

(a) *Estimated number of Applicants/physicians:* 14/14
(b) *Frequency of response:* one time
(c) *Estimated average burden per response:* 70 minutes/60 minutes
(d) *Estimated total reporting burden:* 16 hours/14 hours
(e) *Estimated annual cost to respondents:* Indeterminate

General Description of Collection: The Insulin Dependent Supplemental Documentation Form is used with Applicants who have reported on the Health History Form that they have insulin dependent diabetes. In these cases, the Applicant is provided an Insulin Dependent Supplemental Documentation Form for the treating physician to complete. The Insulin Dependent Supplemental Documentation Form asks the treating physician to document that he or she has discussed with the Applicant medication (insulin) management, including whether an insulin pump is required, as well as the care and maintenance of all required diabetes related monitors and equipment. This form assists the Peace Corps in determining whether the Applicant will be in need of insulin storage while in service and, if so, will assist the Peace Corps in determining an appropriate placement for the Applicant.

• Prescription for Eyeglasses Form.

(a) *Estimated number of Applicants/physicians:* 3,293/3,293
(b) *Frequency of response:* one time
(c) *Estimated average burden per response:* 60 minutes/15 minutes
(d) *Estimated total reporting burden:* 3,293 hours/824 hours
(e) *Estimated annual cost to respondents:* Indeterminate

General Description of Collection: The Prescription for Eyeglasses is used with Applicants who have reported on the Health History Form that they use corrective lenses or otherwise have uncorrected vision that is worse than 20/40. In these cases, Applicants are provided a Prescription for Eyeglasses Form for their prescriber to indicate eyeglasses frame measurements, lens instructions, type of lens, gross vision and any special instructions. This form is used in order to enable the Peace Corps to obtain replacement eyeglasses for a Volunteer during service.

• Required Peace Corps Immunizations Form.

(a) *Estimated number of Applicants/physicians:* 5,600
(b) *Frequency of response:* one time
(c) *Estimated average burden per response:* 60 minutes
(d) *Estimated total reporting burden:* 5,600 hours
(e) *Estimated annual cost to respondents:* Indeterminate

General Description of Collection: The Required Peace Corps Immunizations Form is used to informed Applicants of the specific vaccines and/or documented proof of immunity required for medical clearance for the specific country of service. The form advises the Applicant that all other Center for Disease Control (CDC) recommended vaccinations will be administered after arrival in-country. This form assists the Peace Corps with establishing a baseline of the Applicants immunization history and prepare for any additional vaccines recommended for country of service.

Request for Comment: Peace Corps invites comments on whether the proposed collections of information are necessary for proper performance of the functions of the Peace Corps, including whether the information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

This notice is issued in Washington, DC, on April 5, 2024.

James Olin,

FOIA/Privacy Act Officer.

[FR Doc. 2024–07582 Filed 4–9–24; 8:45 am]

BILLING CODE 6051–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2024–220 and CP2024–226]

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:* April 11, 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).:* MC2024–220 and CP2024–226; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 209 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* April 3, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* April 11, 2024.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2024–07553 Filed 4–9–24; 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).

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2024–221 and CP2024–227; MC2024–222 and CP2024–228]

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:* April 12, 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).:* MC2024–221 and CP2024–227; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 210 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance*

[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).

Date: April 4, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* April 12, 2024.

2. *Docket No(s).:* MC2024–222 and CP2024–228; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 211 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* April 4, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* April 12, 2024.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2024–07604 Filed 4–9–24; 8:45 am]

BILLING CODE 7710–FW–P

RAILROAD RETIREMENT BOARD

Sunshine Act Meetings

TIME AND DATE: 10:00 a.m., April 24, 2024.

PLACE: Members of the public wishing to attend the meeting must submit a written request at least 24 hours prior to the meeting to receive dial-in information. All requests must be sent to *SecretarytotheBoard@rrb.gov.*

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Welcome/Introduction of New Deputy Director of Programs

Legislative and Budget Update—Office of Legislative Affairs

CONTACT PERSON FOR MORE INFORMATION: Stephanie Hillyard, Secretary to the Board, (312) 751–4920.

Authority: 5 U.S.C. 552b.

Dated: April 5, 2024.

Stephanie Hillyard,

Secretary to the Board.

[FR Doc. 2024–07645 Filed 4–8–24; 11:15 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99906; File No. SR–NYSE–2024–18]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change To Amend Section 102.06 of the NYSE Listed Company Manual To Provide That a Special Purpose Acquisition Company Can Remain Listed Until Forty-Two Months From Its Original Listing Date if It Has Entered Into a Definitive Agreement With Respect to a Business Combination Within Three Years of Listing

April 4, 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 March 27, 2024, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Section 102.06 of the NYSE Listed Company Manual (''Manual'') to provide that a special purpose acquisition company (''SPAC'') can remain listed until forty-two months from its original listing date if it has entered into a definitive agreement with respect to a business combination within three years of listing. The text of the proposed rule change is set forth in Exhibit 5. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Section 102.06e of the Manual provides that the Exchange will promptly commence delisting procedures with respect to any listed SPAC that fails to consummate its Business Combination within (i) the time period specified by its constitutive documents or by contract or (ii) three years, whichever is shorter. For purposes of Section 102.06, a Business Combination is defined as a merger, capital stock exchange, asset acquisition, stock purchase, reorganization, or similar business combination with one or more operating businesses or assets with a fair market value equal to at least 80% of the net assets held in trust by the SPAC (net of amounts disbursed to management for working capital purposes and excluding the amount of any deferred underwriting discount held in trust).

Section 102.06e requires the Exchange to promptly commence delisting procedures even for listed SPACs that have entered into a definitive agreement with respect to a Business Combination within three years of their listing date, but that are unable to complete the transaction before the three-year deadline established by 102.06e. As a practical matter, any such NYSE-listed SPAC would need to liquidate, transfer to a market that provides a longer period of time to complete the Business Combination, or face delisting.[4]

The Exchange notes that Nasdaq's SPAC listing requirements include a three-year limitation that is substantially similar to that included in the Exchange's SPAC listing standard.[5] However, Nasdaq appeal panels have granted additional time to SPACs that appeal their delisting for failure to consummate a Business Combination

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange notes that the three-year limitation for a SPAC is established solely by Exchange rule, and that many SPACs have been able to extend their lives beyond three years either by shareholder approval or other mechanisms provided under their organizing documents. Even if approved by shareholders, any extension beyond three years does not circumvent Exchange rules which mandate delisting if a SPAC has not consummated a Business Combination within three years.

[5] *See* Nasdaq IM 5101–2.

within three years in circumstances where the SPAC has a definitive agreement and requests additional time beyond the three years provided by the applicable rule to enable it to consummate its merger.[6]

The Exchange proposes to amend Section 102.06e to extend the period for which a SPAC can remain listed if it has signed a definitive agreement with respect to a Business Combination. As amended, Section 102.06e will provide that the SPAC will be liquidated if it has not (i) entered into a definitive agreement with respect to its Business Combination within (A) the time period specified by its constitutive documents[7] or by contract or (B) three years, whichever is shorter or (ii) consummated its Business Combination within the time period specified by its constitutive documents or by contract or forty-two months, whichever is shorter. The Exchange will promptly commence delisting procedures with respect to any SPAC that fails to (i) enter into a definitive agreement with respect to its Business Combination within (A) the time period specified by its constitutive documents or by contract or (B) three years, whichever is shorter or (ii) consummate its Business Combination within the time period specified by its constitutive documents or by contract or forty-two months, whichever is shorter.

[6] *See, e.g.,* Current Report on Form 8–K furnished to the SEC by Brilliant Acquisition Corporation on September 19, 2023: ''[T]he Company received a notice from the staff of the Listing Qualifications Department of Nasdaq indicating that, unless the Company timely requested a hearing before the Panel, the Company's securities (units, ordinary shares, warrants, and rights) would be subject to suspension and delisting from The Nasdaq Capital Market at the opening of business on July 7, 2023 due to the Company's non-compliance with Nasdaq IM 5101–2, which requires that a special purpose acquisition company complete one or more business combinations within 36 months of the effectiveness of its initial public offering registration statement. . . . The Panel granted the Company's request for continued listing on Nasdaq, subject to the following: (i) on or before November 27, 2023, the Company must advise the Panel on the status of the vote by shareholders of both the Company and Nukkleus, Inc. (''Nukkleus'') regarding their planned business combination; and (ii) the Company's completion of the business combination transaction on or before December 23, 2023''.

[7] The Exchange notes that, on occasion, a SPAC will amend its constitutive documents to extend the time period in which it has to consummate a Business Combination. For example, a SPAC's constitutive documents may initially specify that it has 24 months to consummate a Business Combination, but such SPAC may subsequently seek shareholder approval to amend its constitutive documents to extend that period to 36 months. In applying the proposed rule, the Exchange will consider the ''time period specified in its constitutive documents'' to be the time period so specified, as emended by any shareholder vote.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(5) of the Act[9] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed amendment is consistent with the protection of investors. The Exchange further believes that a SPAC represents a significantly different investment after it enters into a definitive agreement for a Business Combination, as investors who continue to hold the SPAC's securities or acquire them after that agreement is executed have knowledge about the operating asset the SPAC intends to own and can be assumed to own the securities because they want to have an ownership interest in the post-Business Combination entity. As such, the Exchange believes that a SPAC that has signed a definitive merger agreement to acquire an identified business does not present the same investor protection concerns as a SPAC before signing such an agreement, which is more purely a blind pool investment. Furthermore, delisting a SPAC that has signed a definitive merger agreement when it reaches the three-year deadline may be contrary to the interests of the SPAC's public shareholders at that time.

For the foregoing reasons, the Exchange believes that it is consistent with the protection of investors to provide a SPAC that has signed a Business Combination agreement within three years a maximum period of forty-two months from the time of listing to consummate a Business Combination.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange further believes that the proposed rule change will increase competition by increasing the possibility that listed SPACs will be able to complete their Business Combinations before the prospect of delisting. The Exchange also believes that the proposed amendment will increase competition for the listing of SPACs and Business Combinations by enabling SPACs listed on the NYSE additional flexibility in the timing of their Business Combinations that is similar to the timing Nasdaq currently provides to SPACs through discretionary grants of additional time by hearing panels in their delisting process.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSE–2024–18 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSE–2024–18. 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–NYSE–2024–18 and should be submitted on or before May 1, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–07538 Filed 4–9–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99907; File No. SR–PEARL–2024–15]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX Pearl Equities Exchange Fee Schedule To Establish Market Data Fees

April 4, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 26, 2024, MIAX PEARL, LLC (''MIAX Pearl'' 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.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Pearl Equities Exchange Fee Schedule (the ''Fee Schedule'') to adopt fees for the Exchange's proprietary market data feeds.[3]

The text of the proposed rule change is available on the Exchange's website at *https://www.miaxoptions.com/rule-filings,* at MIAX Pearl's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

MIAX Pearl Equities provided its proprietary market data for free to subscribers for over three and half years since it commenced operations in September 2020.[4] Since that time, the Exchange has solely and entirely absorbed all costs associated with compiling and disseminating its proprietary market data. The Exchange offers two standard proprietary market data products, the Top of Market (''ToM'') feed and the Depth of Market (''DoM'') feed (collectively, the ''market data feeds''). Each of these proprietary market data products are described in Exchange Rule 2625.

Exchange Rule 2625(a) provides that the DoM feed is a data feed that contains the displayed price and size of each order in an equity security entered in the System,[5] as well as order execution information, order cancellations, order modifications, order identification numbers, and administrative messages. Exchange Rule 2625(b) provides that the ToM feed is a data feed that contains the price and aggregate size of displayed top of book quotations, order execution information, and administrative messages for equity securities entered into the System. Section 3 of the Fee Schedule entitled, Market Data Fees, specifically provides that fees for both the ToM and DoM feeds are waived for the Waiver Period.[6] As described in more detail below, the Exchange proposes to remove this waiver language and adopt fees for the ToM and DoM feeds to recoup its ongoing costs going forward.

The Exchange notes that there is no requirement that any Equity Member[7] or market participant subscribe to the ToM or DoM feeds offered by the Exchange. Instead, an Equity Member may choose to maintain subscriptions to the ToM or DoM feeds based on their own business needs and trading models. The proposed fees will not apply differently based upon the size or type of firm, but rather based upon the subscriptions that each firm elects to purchase.

The Exchange commenced operations in September 2020 and expressly waived fees for both the ToM and DoM data feeds since that time to incentivize market participants to subscribe and make the Exchange's market data more widely available.[8] In the three and a half years since the Exchange launched operations, its market share has grown from 0% to approximately 2.0% for the month of March 2024.[9] One of the primary objectives of the Exchange is to provide competition and to provide low

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] All references to the ''Exchange'' in this filing refer to MIAX Pearl Equities. Any references to the options trading facility of MIAX PEARL, LLC will specifically be referred to as ''MIAX Pearl Options.''

[4] *See* Securities Exchange Act Release No. 90651 (December 11, 2020), 85 FR 81971 (December 17, 2020) (SR–PEARL–2020–33).

[5] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[6] The term ''Waiver Period'' means, for each applicable fee, the period of time from the initial effective date of the MIAX Pearl Equities Fee Schedule until such time that MIAX Pearl has an effective fee filing establishing the applicable fee. MIAX Pearl Equities will issue a Regulatory Circular announcing the establishment of an applicable fee that was subject to a Waiver Period at least fifteen (15) days prior to the termination of the Waiver Period and effective date of any such applicable fee. *See* the Definitions section of the Fee Schedule.

[7] The term ''Equity Member'' is a Member authorized by the Exchange to transact business on MIAX Pearl Equities. *See* Exchange Rule 1901.

[8] *See supra* note 4.

[9] *See* the ''Market Share'' section of the Exchange's website, *available at https://www.miaxglobal.com/.*

cost options to the industry. Consistent with this objective, the Exchange believes that this proposal reflects a simple, competitive, reasonable, and equitable pricing structure.

The Exchange believes that exchanges, in setting fees of all types, should meet very high standards of transparency to demonstrate why each new fee or fee increase meets the requirements of the Act that fees be reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among Equity Members and markets. The Exchange believes this high standard is especially important when an exchange imposes various fees for market participants to access an exchange's market data. The Exchange believes that it is important to demonstrate that these fees are based on its costs and reasonable business needs. Accordingly, the Exchange included a cost analysis below in connection with the proposed market data fees and the costs associated with compiling and providing the ToM and DoM feeds (''Cost Analysis'').

The Exchange believes the proposed fees will allow the Exchange to offset the expenses [10] the Exchange has and will continue to incur associated with compiling and disseminating the ToM and DoM feeds. Further, the Exchange believes it provided sufficient transparency in the Cost Analysis provided below, which provides a basis for how the Exchange determined to charge such fees. The Exchange's proposal is described below.

Definitions

The Exchange proposes to include a Definitions section at the beginning of Section 3 of the Fee Schedule. The purpose of the Definitions section is to provide market participants greater clarity and transparency regarding the applicability of fees by defining certain terms used in connection with market data feeds within the Fee Schedule in a single location related to the Exchange's market data products. The Exchange notes that other equities exchanges include similar Definitions in their respective fee schedules,[11] and that each of the Exchange's proposed definitions are based on those exchanges. The Exchange believes that including a Definitions section for market data products makes the Fee Schedule more user-friendly and comprehensive.

The Exchange proposes to define the following terms in Section 3 of the Fee Schedule:

- *Distributor.* Any entity that receives the Exchange data product directly from the Exchange or indirectly through another entity and then distributes it internally or externally to a third party.
- *External Distributor.* A Distributor that receives the Exchange data product and then distributes that data to a third party or one or more Users outside the Distributor's own entity.
- *Internal Distributor.* A Distributor that receives the Exchange data product and then distributes that data to one or more Users within the Distributor's own entity.
  - The Exchange notes that it proposes to use the phrase ''own organization'' in the definition of Internal Distributor and External Distributor because a subscriber would be permitted to share data received from an exchange data product to other legal entities affiliated with the subscriber's entity that have been disclosed to the Exchange without such distribution being considered external to a third party. For instance, if a company has multiple affiliated broker-dealers under the same holding company, that company could have one of the broker-dealers or a non-broker-dealer affiliate subscribe to an exchange data product and then share the data with other affiliates that have a need for the data. This sharing with affiliates would not be considered external distribution to a third party but instead would be considered internal distribution to data recipients within the Distributor's own organization.
- *Non-Display Usage.* Any method of accessing an Exchange data product that involves access or use by a machine or automated device without access or use of a display by a natural person or persons.
- *Non-Professional User.* A natural person or qualifying trust that uses Exchange data only for personal purposes and not for any commercial purpose and, for a natural person who works in the United States, is not: (i) registered or qualified in any capacity with the Securities and Exchange Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an ''investment adviser'' as that term is defined in Section 202(a)(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt; or, for a natural person who works outside of the United States, does not perform the same functions as would disqualify such person as a Non-Professional User if he or she worked in the United States.
- *Professional User.* Any User other than a Non-Professional User.
- *Trading Platform.* Any execution platform operated as or by a registered National Securities Exchange (as defined in Section 3(a)(1) of the Exchange Act), an Alternative Trading System (as defined in Rule 300(a) of Regulation ATS), or an Electronic Communications Network (as defined in Rule 600(b)(23) of Regulation NMS).
- *User.* A Professional User or Non-Professional User.

Proposed Market Data Pricing

As described above, the ToM feed is a data feed that contains the price and aggregate size of displayed top of book quotations, order execution information, and administrative messages for equity securities entered into the System. The DoM feed is a data feed that contains the displayed price and size of each order in an equity security entered in the System, as well as order execution information, order cancellations, order modifications, order identification numbers, and administrative messages. The Exchange proposes to charge the below fees for the ToM and DoM data feeds, which, the Exchange believes are equal to or lower than market data fees charged by other similarly situated equities exchanges. Each of the below capitalized terms are defined above and would be included under the proposed Definitions section under Section 3, Market Data Fees, of the Fee Schedule.

1. *Internal Distributor Fee.* The Exchange proposes to charge Internal Distributors a monthly fee of $1,000.00 for the ToM feed and $2,000.00 for the DoM feed. The proposed Internal Distributor fees would only be charged once per month per subscriber.

2. *External Distributor Fee.* The Exchange proposes to charge Internal Distributors a monthly fee of $2,000.00 for the ToM feed and $2,500.00 for the DoM feed. The proposed External

[10] For the avoidance of doubt, all references to expense or costs in this filing, including the cost categories discussed below, refer to costs incurred by MIAX Pearl Equities only and not MIAX Pearl Options, the options trading facility.

[11] *See* the market data sections of the fee schedules for the Cboe BZX Exchange, Inc. (''Cboe BZX''); Cboe BYX Exchange, Inc. (''Cboe BYX''); Cboe EDGA Exchange, Inc. (''Cboe EDGA''); *and* Cboe EDGX Exchange, Inc. (''Cboe EDGX''). *See also* the market data definition section of the MEMX LLC's (''MEMX'') fee schedule; *and* Securities Exchange Act Release No. 97130 (March 13, 2023), 88 FR 16491 (March 17, 2023) (SR–MEMX–2023–04) (''MEMX Market Data Fee Proposal'').

Distributor fees would only be charged once per month per subscriber.

3. *User Fees.* For the ToM feed, the Exchange proposes to charge a monthly fee of $2.00 for each Professional User and $0.10 for each Non-Professional User. For the DoM feed, the Exchange proposes to charge a monthly fee of $30.00 for each Professional User and $3.00 for each Non-Professional User. The proposed User fees would apply to each person that has access to the ToM or DoM feed that is provided by a Distributor (either Internal or External) for displayed usage. Each Distributor's User count would include every individual that accesses the data regardless of the purpose for which the individual uses the data. Distributors of the ToM or DoM feed would be required to report all Professional and Non-Professional Users in accordance with the following:

- In connection with a Distributor's distribution of the ToM or DoM feed, the Distributor must count as one User each unique User that the Distributor has entitled to have access to the ToM or DoM feed.
- Distributors must report each unique individual person who receives access through multiple devices or multiple methods (*e.g.,* a single User has multiple passwords and user identifications) as one User.
- If a Distributor entitles one or more individuals to use the same device, the Distributor must include only the individuals, and not the device, in the count. Thus, Distributors would not be required to report User device counts associated with a User's display use of the data feed.

4. *Enterprise Fee.* As an alternative to User fees, Distributors may purchase a monthly Enterprise license to receive ToM or DoM feeds for distribution to an unlimited number of Professional and Non-Professional Users. This provision would be codified under footnote ''a'' under the description of each the ToM and DoM feed in the Fee Schedule. The Exchange proposes to establish a monthly Enterprise fee of $15,000.00 for ToM and $25,000.00 for the DoM feed.

5. *Non-Display Usage Fees.* For both the ToM and DoM feeds, the Exchange proposes to establish separate Non-Display Usage fees for usage by Trading Platforms and other Users (*i.e.,* not by Trading Platforms).

- *Non-Display Usage.* For Non-Display Usage, the Exchange proposes to establish a monthly fee of $1,000.00 for the ToM feed and $2,500.00 for the DoM feed.[12]
- Subscribers of Non-Display Usage for both the ToM and DoM feed will only be subject to the Non-Display Usage fee for the DoM feed. In other words, such subscribers would receive both the ToM and DoM feeds but only be charged the Non-Display Usage fee of $2,500.00 for the DoM feed. This provision would be codified under footnote ''b'' under the description of each the ToM and DoM feed in the Fee Schedule.
- *Non-Display Usage by Trading Platforms.* For Non-Display Usage by Trading Platforms, the Exchange proposes to establish a monthly fee of $2,500 for the ToM and DoM feeds. The Non-Displayed Usage by Trading Platform fee would only be charged per subscriber that uses the data within a Trading Platform.
- Subscribers of Non-Display Usage by Trading Platforms for both the ToM and DoM feed will only be subject to the Non-Display Usage by Trading Platforms fee for the DoM feed. In other words, such subscribers would receive both the ToM and DoM feeds but only be charged the Non-Display Usage by Trading Platforms fee of $2,500.00 for the DoM feed. This provision would be codified under footnote ''c'' under the description of each the ToM and DoM feed in the Fee Schedule.
- The fee would also represent the maximum charge per subscriber regardless of the number of Trading Platforms operated by the subscriber that receives the data for Non-Display Usage. This provision would be codified under footnote ''d'' under the description of each the ToM and DoM feed in the Fee Schedule.
- *Miscellaneous.* The proposed fees for Non-Display Usage would only be charged once per category per subscriber. In other words, with respect to Non-Display Usage Fees, a subscriber that uses the ToM feed for: (i) non-display purposes but not to operate a Trading Platform would pay $1,000 per month; (ii) a subscriber that uses the ToM feed in connection with the operation of one or more Trading Platforms (but not for other purposes) would pay $2,500 per month; and (iii) a subscriber that uses the ToM feed for non-display purposes other than operating a Trading Platform and for the operation of one or more Trading Platforms would pay $3,500 per month.

Implementation

The Exchange issued an alert publicly announcing the proposed fees on January 31, 2024.[13] The Exchange issued a Regulatory Circular on March 15, 2024 announcing the establishment of the proposed market data fees to satisfy the required fifteen (15) day notice period, as described in the Definitions Section of the Fee Schedule for termination of the Waiver Period.[14] The proposed fee changes will be effective beginning April 1, 2024.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)[15] of the Act in general, and furthers the objectives of Section 6(b)(4)[16] of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Equity Members and other persons using its facilities. Additionally, the Exchange believes that the proposed fees are consistent with the objectives of Section 6(b)(5)[17] of the Act in that they are designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to a free and open market and national market system, and, in general, to protect investors and the public interest, and, particularly, are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In 2019, Commission staff published guidance suggesting the types of information that self-regulatory organizations (''SROs'') may use to demonstrate that their fee filings comply with the standards of the Exchange Act (the ''Staff Guidance'').[18] While the Exchange understands that the Staff Guidance does not create new legal obligations on SROs, the Staff Guidance is consistent with the Exchange's view about the type and level of transparency that exchanges should meet to

[12] Non-Display Usage would include trading uses such as high frequency or algorithmic trading as well as any trading in any asset class, automated order or quote generation and/or order pegging, price referencing for smart order routing, operations control programs, investment analysis, order verification, surveillance programs, risk management, compliance, and portfolio management.

[13] *See* Fee Change Alert, MIAX Pearl Equities Exchange—April 1, 2024 Market Data Fee Changes, *available at https://www.miaxglobal.com/alert/2024/01/31/miax-pearl-equities-exchange-april-1-2024-market-data-fee-changes.*

[14] *See* MIAX Pearl Equities Regulatory Circular 2024–06, *Termination of Waiver Period for Market Data Fees and Establishment of Fee Amounts,* dated March 15, 2024, *available at Pearl_Equities_RC_2024_06.pdf* (*miaxglobal.com*).

[15] 15 U.S.C. 78f.

[16] 15 U.S.C. 78f(b)(4).

[17] 15 U.S.C. 78f(b)(5).

[18] *See* Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019), *available at https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees.*

demonstrate compliance with their existing obligations when they seek to charge new fees. The Staff Guidance provides that in assessing the reasonableness of a fee, the Staff would consider whether the fee is constrained by significant competitive forces. To determine whether a proposed fee is constrained by significant competitive forces, the Staff Guidance further provides that the Staff would consider whether the evidence provided by an SRO in a Fee Filing proposal demonstrates (i) that there are reasonable substitutes for the product or service that is the subject of a proposed fee; (ii) that ''platform'' competition constrains the fee; and/or (iii) that the revenue and cost analysis provided by the SRO otherwise demonstrates that the proposed fee would not result in the SRO taking supra-competitive profits.[19] The Exchange provides sufficient evidence below to support the findings that the proposed fees are constrained by competitive forces; the market data feeds each have a reasonable substitute; and that the proposed fees would not result in a supra-competitive profit.

In adopting Regulation NMS, the Commission granted SROs and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. Particularly, the market data feeds further broaden the availability of U.S. option market data to investors consistent with the principles of Regulation NMS. The data products also promotes increased transparency through the dissemination of information regarding quotes and last sale information during the trading day, which may allow market participants to make better informed trading decisions throughout the day.

There are currently 16 registered exchanges that trade equities. For the month of March 2024, based on publicly available information, no single equities exchange had more than approximately 16% of the equities market share and the Exchange represented only approximately 2.0% of the equities market share.[20] The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, 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.'' [21] Making similar data products available to market participants fosters competition in the marketplace, and constrains the ability of exchanges to charge supra-competitive fees. In the event that a market participant views one exchange's data product as more or less attractive than the competition they can and do switch between similar products.

The fact that the market for order flow is competitive has long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated, ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .'' [22]

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention to determine 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.'' [23]

Congress directed the Commission to ''rely on 'competition, whenever possible, in meeting its regulatory responsibilities for overseeing the SROs and the national market system.' '' [24] As a result, the Commission has historically relied on competitive forces to determine whether a fee proposal is equitable, fair, reasonable, and not unreasonably or unfairly discriminatory. ''If competitive forces are operative, the self-interest of the exchanges themselves will work powerfully to constrain unreasonable or unfair behavior.'' [25] Accordingly, ''the existence of significant competition provides a substantial basis for finding that the terms of an exchange's fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly discriminatory.'' [26] In the Staff Guidance, Commission Staff indicated that they would look at factors beyond the competitive environment, such as cost, only if a ''proposal lacks persuasive evidence that the proposed fee is constrained by significant competitive forces.'' [27] In this case, the Exchange provided the below Cost Analysis.

Cost Analysis

In general, the Exchange believes that exchanges, in setting fees of all types, should meet high standards of transparency to demonstrate why each new fee or fee increase meets the Exchange Act requirements that fees be reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among members and markets. In particular, the Exchange believes that each exchange should take extra care to be able to demonstrate that these fees are based on its costs and reasonable business needs.

Accordingly, in proposing to charge fees for market data, the Exchange is especially diligent in assessing those fees in a transparent way against its own aggregate costs of providing the related service, and in carefully and transparently assessing the impact on Equity Members—both generally and in relation to other Equity Members—to ensure the fees will not create a financial burden on any participant and will not have an undue impact in particular on smaller Equity Members and competition among Equity Members in general. The Exchange does not believe it needs to otherwise address questions about market competition in

[19] *Id.*

[20] *See* the ''Market Share'' section of the Exchange's website, *available at https://www.miaxglobal.com/.*

[21] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[22] *See NetCoalition,* 615 F.3d at 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)).

[23] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[24] *See NetCoalition,* 615 F.3d at 534–35; *see also* H.R. Rep. No. 94–229 at 92 (1975) (''[I]t is the intent of the conferees that the national market system evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed.'').

[25] *See* Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74,770 (December 9, 2008) (SR–NYSEArca–2006–21).

[26] *Id.*

[27] *See supra* note 18.

the context of this filing because the proposed fees are consistent with the Act based on its Cost Analysis. The Exchange also believes that this level of diligence and transparency is called for by the requirements of Section 19(b)(1) under the Act,[28] and Rule 19b–4 thereunder,[29] with respect to the types of information SROs should provide when filing fee changes, and Section 6(b) of the Act,[30] which requires, among other things, that exchange fees be reasonable and equitably allocated,[31] not designed to permit unfair discrimination,[32] and that they not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[33] This proposal addresses those requirements, and the analysis and data in this section are designed to clearly and comprehensively show how they are met.

In 2020, the Exchange completed a study of its aggregate costs to produce market data and connectivity, defined above as its Cost Analysis.[34] The Cost Analysis required a detailed analysis of the Exchange's aggregate baseline costs, including a determination and allocation of costs for core services provided by the Exchange—transaction execution, market data, membership services, physical connectivity, and port access (which provide order entry, cancellation and modification functionality, risk functionality, the ability to receive drop copies, and other functionality). The Exchange separately divided its costs between those costs necessary to deliver each of these core services, including infrastructure, software, human resources (*i.e.,* personnel), and certain general and administrative expenses (''cost drivers'').

As an initial step, the Exchange determined the total cost for the Exchange and its affiliated markets [35] for each cost driver as part of its 2024 budget review process. The 2024 budget review is a company-wide process that occurs over the course of many months, includes meetings among senior management, department heads, and the Finance Team. Each department head is required to send a ''bottom up'' budget to the Finance Team allocating costs at the profit and loss account and vendor levels for the Exchange and its affiliated markets based on a number of factors, including server counts, additional hardware and software utilization, current or anticipated functional or non-functional development projects, capacity needs, end-of-life or end-of-service intervals, number of members, market model (*e.g.,* price time or pro-rata, simple only or simple and complex markets, auction functionality, etc.), which may impact message traffic, individual system architectures that impact platform size,[36] storage needs, dedicated infrastructure versus shared infrastructure allocated per platform based on the resources required to support each platform, number of available connections, and employees allocated time. All of these factors result in different allocation percentages among the Exchange and its affiliated markets, *i.e.,* the different percentages of the overall cost driver allocated to the Exchange and its affiliated markets will cause the dollar amount of the overall cost allocated among the Exchange and its affiliated markets to also differ. Because the Exchange's parent company currently owns and operates four separate and distinct marketplaces, the Exchange must determine the costs associated with each actual market—as opposed to the Exchange's parent company simply concluding that all costs drivers are the same at each individual marketplace and dividing total cost by four (4) (evenly for each marketplace). Rather, the Exchange's parent company determines an accurate cost for each marketplace, which results in different allocations and amounts across exchanges for the same cost drivers, due to the unique factors of each marketplace as described above. This allocation methodology also ensures that no cost would be allocated twice or double-counted between the Exchange and its affiliated markets. MIAX PEARL, LLC further confirms that there is no double counting of expenses between the options and equities platform of MIAX PEARL, LLC. The Finance Team then consolidates the budget and sends it to senior management, including the Chief Financial Officer and Chief Executive Officer, for review and approval. Next, the budget is presented to the Board of Directors and the Finance and Audit Committees for each exchange for their approval. The above steps encompass the first step of the cost allocation process.

The next step involves determining what portion of the cost allocated to the Exchange pursuant to the above methodology is to be allocated to each core service, *e.g.,* connectivity and ports, market data, and transaction services. The Exchange and its affiliated markets adopted an allocation methodology with thoughtful and consistently applied principles to guide how much of a particular cost amount allocated to the Exchange should be allocated within the Exchange to each core service. This is the final step in the cost allocation process and is applied to each of the cost drivers set forth below. For instance, fixed costs that are not driven by client activity (*e.g.,* message rates), such as data center costs, were allocated more heavily to the provision of physical connectivity (for example, 60.1% of the data center total expense amount is allocated to 10Gb ULL connectivity), with smaller allocations to ToM and DoM (2.0% combined), and the remainder to the provision of other connectivity, ports, transaction execution, and membership services (37.9%). This next level of the allocation methodology at the individual exchange level also took into account factors similar to those set forth under the first step of the allocation methodology process described above, to determine the appropriate allocation to connectivity or market data versus allocations for other services. This allocation methodology was developed through an assessment of costs with senior management intimately familiar with each area of the Exchange's operations. After adopting this allocation methodology, the Exchange then applied an allocation of each cost driver to each core service, resulting in the cost allocations described below. Each of the below cost allocations is unique to the Exchange and represents a percentage of overall cost that was allocated to the Exchange pursuant to the initial allocation described above.

By allocating segmented costs to each core service, the Exchange was able to estimate by core service the potential margin it might earn based on different fee models. The Exchange notes that as a non-listing venue it has five primary sources of revenue that it can potentially use to fund its operations: transaction fees, fees for connectivity and port services, membership fees, regulatory fees, and market data fees.

[28] 15 U.S.C. 78s(b)(1).

[29] 17 CFR 240.19b–4.

[30] 15 U.S.C. 78f(b).

[31] 15 U.S.C. 78f(b)(4).

[32] 15 U.S.C. 78f(b)(5).

[33] 15 U.S.C. 78f(b)(8).

[34] The Exchange frequently updates it Cost Analysis as strategic initiatives change, costs increase or decrease, and market participant needs and trading activity changes. The Exchange's most recent Cost Analysis was conducted ahead of this filing.

[35] The affiliated markets include Miami International Securities Exchange, LLC (''MIAX''); separately, the options and equities markets of MIAX Pearl; and MIAX Emerald, LLC (''MIAX Emerald'').

[36] For example, MIAX maintains 24 matching engines, MIAX Pearl Options maintains 12 matching engines, MIAX Pearl Equities maintains 24 matching engines, and MIAX Emerald maintains 12 matching engines.

Accordingly, the Exchange must cover its expenses from these five primary sources of revenue. The Exchange also notes that as a general matter each of these sources of revenue is based on services that are interdependent. For instance, the Exchange's system for executing transactions is dependent on physical hardware and connectivity; only Equity Members and parties that they sponsor to participate directly on the Exchange may submit orders to the Exchange; many Equity Members (but not all) consume market data from the Exchange in order to trade on the Exchange; and, the Exchange consumes market data from external sources in order to comply with regulatory obligations. Accordingly, given this interdependence, the allocation of costs to each service or revenue source required judgment of the Exchange and was weighted based on estimates of the Exchange that the Exchange believes are reasonable, as set forth below. While there is no standardized and generally accepted methodology for the allocation of an exchange's costs, the Exchange's methodology is the result of an extensive review and analysis and will be consistently applied going forward for any other cost-justified potential fee proposals. In the absence of the Commission attempting to specify a methodology for the allocation of exchanges' interdependent costs, the Exchange will continue to be left with its best efforts to attempt to conduct such an allocation in a thoughtful and reasonable manner.

Through the Exchange's extensive Cost Analysis, which was again recently further refined, the Exchange analyzed nearly every expense item in the Exchange's general expense ledger to determine whether each such expense relates to the provision of market data feeds, and, if such expense did so relate, what portion (or percentage) of such expense actually supports the provision of market data feeds, and thus bears a relationship that is, ''in nature and closeness,'' directly related to market data feeds. In turn, the Exchange allocated certain costs more to physical connectivity and others to ports, while certain costs were only allocated to such services at a very low percentage or not at all, using consistent allocation methodologies as described above. Based on this analysis, the Exchange estimates that the aggregate monthly cost to provide the market data feeds is $150,031 (the Exchange divided the annual cost for each of market data feed by 12 months, then added both numbers together), as further detailed below.

Costs Related to Offering the Market Data Feeds

The following chart details the individual line-item (annual) costs considered by the Exchange to be related to offering the market data feeds to its Equity Members and other customers, as well as the percentage of the Exchange's overall costs that such costs represent for such area (*e.g.,* as set forth below, the Exchange allocated approximately 8.9% of its overall Human Resources cost to offering the market data feeds).

Cost drivers	Allocated annual cost [a]	Allocated monthly cost [b]	% of all
Human Resources	$1,577,592	$131,466	8.9
Connectivity (external fees, cabling, switches, etc.)	933	78	2.0
Internet Services and External Market Data	0.00	0.00	0.0
Data Center	42,717	3,560	2.0
Hardware and Software Maintenance & Licenses	25,921	2,160	2.0
Depreciation	25,542	2,129	0.5
Allocated Shared Expenses	127,655	10,638	2.0
Total	1,800,360	$150,031	5.1

[a] The Annual Cost includes figures rounded to the nearest dollar.
[b] The Monthly Cost was determined by dividing the Annual Cost for each line item by twelve (12) months and rounding up or down to the nearest dollar.

Below are additional details regarding each of the line-item costs considered by the Exchange to be related to offering the market data feeds. While some costs were attempted to be allocated as equally as possible among the Exchange and its affiliated markets, the Exchange notes that some of its cost allocation percentages for certain cost drivers differ when compared to the same cost drivers for the Exchange's affiliated markets, MIAX and MIAX Emerald, in their recent proposed fee changes for options market data.[37] This is because the Exchange's cost allocation methodology utilizes the actual projected costs of the Exchange (which are specific to the Exchange and are independent of the costs projected and utilized by the Exchange's affiliated markets) to determine its actual costs, which may vary across the Exchange and its affiliated markets based on factors that are unique to each marketplace, including that the Exchange, MIAX Pearl Options, and its affiliates trade different asset classes.

Human Resources

The Exchange notes that it and its affiliated markets anticipate that by year-end 2024, there will be 289 employees (excluding employees at non-options/equities exchange subsidiaries of Miami International Holdings, Inc. (''MIH''), the holding company of the Exchange and its affiliated markets), and each department leader has direct knowledge of the time spent by each employee with respect to the various tasks necessary to operate the Exchange. Specifically, twice a year, and as needed with additional new hires and new project initiatives, in consultation with employees as needed, managers and department heads assign a percentage of time to every employee and then allocate that time amongst the Exchange and its affiliated markets to determine each market's individual Human Resources expense. Then, managers and department heads assign a percentage of each employee's time allocated to the Exchange into buckets including network connectivity, ports, market data, and other exchange services. This process ensures that every employee is 100% allocated, ensuring there is no double counting between the Exchange and its affiliated markets.

For personnel costs (Human Resources), the Exchange calculated an allocation of employee time for employees whose functions include providing and maintaining market data feeds and performance thereof (primarily the Exchange's network

[37] *See* Securities Exchange Act Release Nos. 99736 (March 14, 2024), 89 FR 19929 (March 20, 2024) (SR–MIAX–2024–13) *and* 99737 (March 14, 2024), 89 FR 19915 (March 20, 2024) (SR–EMERALD–2024–09).

infrastructure team, which spends a portion of their time performing functions necessary to provide market data). As described more fully above, the Exchange's parent company allocates costs to the Exchange and its affiliated markets and then a portion of the Human Resources costs allocated to the Exchange is then allocated to market data. From that portion allocated to the Exchange that applied to market data, the Exchange then allocated a weighted average of 9.1% of each employee's time from the above group to market data feeds (which excludes an allocation for the recently hired Head of Data Services for the Exchange and its affiliates).

The Exchange also allocated Human Resources costs to provide the market data feeds to a limited subset of personnel with ancillary functions related to establishing and maintaining such market data feeds (such as information security, sales, membership, and finance personnel). The Exchange allocated cost on an employee-by-employee basis (*i.e.,* only including those personnel who support functions related to providing market data feeds) and then applied a smaller allocation to such employees' time to market data (8.8%, which includes an allocation for the Head of Data Services). This other group of personnel with a smaller allocation of Human Resources costs also have a direct nexus to providing the market data feeds, whether it is a sales person selling a market data feed, finance personnel billing for market data feeds or providing budget analysis, or information security ensuring that such market data feeds are secure and adequately defended from an outside intrusion.

The estimates of Human Resources cost were therefore determined by consulting with such department leaders, determining which employees are involved in tasks related to providing market data feeds, and confirming that the proposed allocations were reasonable based on an understanding of the percentage of time such employees devote to those tasks. This includes personnel from the Exchange departments that are predominately involved in providing the market data feeds: Business Systems Development, Trading Systems Development, Systems Operations and Network Monitoring, Network and Data Center Operations, Listings, Trading Operations, and Project Management. Again, the Exchange allocated 9.1% of each of their employee's time assigned to the Exchange for the market data feeds, as stated above. Employees from these departments perform numerous functions to support the market data feeds, such as the configuration and maintenance of the hardware necessary to support the market data feeds. This hardware includes servers, routers, switches, firewalls, and monitoring devices. These employees also perform software upgrades, vulnerability assessments, remediation and patch installs, equipment configuration and hardening, as well as performance and capacity management. These employees also engage in research and development analysis for equipment and software supporting market data feeds and design, and support the development and on-going maintenance of internally-developed applications as well as data capture and analysis, and Equity Member and internal Exchange reports related to network and system performance. The above list of employee functions is not exhaustive of all the functions performed by Exchange employees to support market, but illustrates the breath of functions those employees perform in support of the above cost and time allocations.

Lastly, the Exchange notes that senior level executives' time was only allocated to the market data feeds related Human Resources costs to the extent that they are involved in overseeing tasks related to providing market data. The Human Resources cost was calculated using a blended rate of compensation reflecting salary, equity and bonus compensation, benefits, payroll taxes, and 401(k) matching contributions.

Connectivity (External Fees, Cabling, Switches, etc.)

The Connectivity cost driver includes cabling and switches required to generate and disseminate the market data feeds and operate the Exchange. The Connectivity cost driver is more narrowly focused on technology used to complete Equity Member subscriptions to the market data feeds and the servers used at the Exchange's primary and back-up data centers specifically for the market data feeds. Further, as certain servers are only partially utilized to generate and disseminate the market data feeds, only the percentage of such servers devoted to generating and disseminating the market data feeds was included (*i.e.,* the capacity of such servers allocated to the market data feeds).[38]

Internet Services and External Market Data

The next cost driver consists of internet services and external market data. Internet services includes third-party service providers that provide the internet, fiber and bandwidth connections between the Exchange's networks, primary and secondary data centers, and office locations in Princeton and Miami. External market data includes fees paid to third parties, including other exchanges, to receive market data. The Exchange did not allocate any costs associated with internet services or external market data to the market data feeds.

Data Center

Data Center costs includes an allocation of the costs the Exchange incurs to provide the market data feeds in the third-party data centers where it maintains its equipment (such as dedicated space, security services, cooling and power). The Exchange does not own the primary data center or the secondary data center, but instead leases space in data centers operated by third parties. As the Data Center costs are primarily for space, power, and cooling of servers, the Exchange allocated 2.0% to the applicable Data Center costs for the market data feeds. The Exchange believes it is reasonable to apply the same proportionate percentage of Data Center costs to that of the Connectivity cost driver.

Hardware and Software Maintenance and Licenses

Hardware and Software Maintenance and Licenses includes hardware and software licenses used to operate and monitor physical assets necessary to offer the market data feeds.[39] Because the hardware and software license fees are correlated to the servers used by the Exchange, the Exchange again applied an allocation of 2.0% of its costs for Hardware and Software Maintenance

[38] The Exchange understands that the Investors Exchange, Inc. (''IEX'') and MEMX LLC (''MEMX'') both allocated a percentage of their servers to the production and dissemination of market data to support proposed market data fees. *See* Securities Exchange Act Release Nos. 94630 (April 7, 2022), 87 FR 21945, at page 21949 (April 13, 2022) (SR–IEX–2022–02) *and* 97130 (March 13, 2023), 88 FR 16491 (March 17, 2023) (SR–MEMX–2023–04). The Exchange does not have insight into either MEMX's or IEX's technology infrastructure or what their determinations were based on. However, the Exchange reviewed its own technology infrastructure and believes based on its design, it is more appropriate for the Exchange to allocate a portion of its Connectivity cost driver to market data based on a percentage of overall cost, not on a per server basis.

[39] This expense may differ from the Exchange's affiliated markets. This is because each market may maintain and utilize a different amount of hardware and software based on its market model and infrastructure needs. The Exchange allocated a percentage of the overall cost based on actual amounts of hardware and software utilized by that market, which resulted in different cost allocations and dollar amounts.

and Licenses to the market data feeds. The Exchange notes that this allocation may differ from its affiliates because MIAX Pearl Equities maintains software licenses that are unique to its trading platform and used only for the trading of equity securities. The cost for these licenses cannot be shared with MIAX Pearl Equities' affiliated options markets because each of those platforms trade only options, not equities. MIAX Pearl Equities' affiliates are able to share the cost of many of their software licenses among the multiple options platforms (thus lowering the cost to each individual options platform), whereas MIAX Pearl Equities cannot share such cost and, therefore, bears the entire cost.

Depreciation

All physical assets, software, and hardware used to provide the market data feeds, which also includes assets used for testing and monitoring of Exchange infrastructure to provide market data, were valued at cost, and depreciated or leased over periods ranging from three to five years. Thus, the depreciation cost primarily relates to servers necessary to operate the Exchange, some of which are owned by the Exchange and some of which are leased by the Exchange in order to allow efficient periodic technology refreshes. The Exchange also included in the Depreciation cost driver certain budgeted improvements that the Exchange intends to capitalize and depreciate with respect to the market data feeds in the near-term. As with the other allocated costs in the Exchange's updated Cost Analysis, the Depreciation cost was therefore narrowly tailored to depreciation related to the market data feeds. As noted above, the Exchange allocated 0.5% of its allocated depreciation costs to providing the market data feeds.

The vast majority of the software the Exchange uses for its operations to generate and disseminate the market data feeds has been developed in-house over an extended period. This software development also requires quality assurance and thorough testing to ensure the software works as intended. Hardware used to generate and disseminate the market data feeds, which includes servers and other physical equipment the Exchange purchased. Accordingly, the Exchange included depreciation costs related to depreciated hardware and software used to generate and disseminate the market data feeds. The Exchange also included in the Depreciation costs certain budgeted improvements that the Exchange intends to capitalize and depreciate with respect to the market data feeds in the near-term. As with the other allocated costs in the Exchange's updated Cost Analysis, the Depreciation cost was therefore narrowly tailored to depreciation related to the market data feeds.

This allocation is also based on MIAX Pearl Equities being a newer market and having newer physical assets and software subject to depreciation than its affiliate options exchanges. The Exchange's affiliate options exchanges are older markets that have more software and equipment that have been fully depreciated when compared to the newer software and hardware currently being depreciated by MIAX Pearl Equities at higher rates.

Allocated Shared Expenses

Finally, as with other exchange products and services, a portion of general shared expenses was allocated to the provision of the market data feeds. These general shared costs are integral to exchange operations, including its ability to provide the market data feeds. Costs included in general shared expenses include office space and office expenses (*e.g.,* occupancy and overhead expenses), utilities, recruiting and training, marketing and advertising costs, professional fees for legal, tax and accounting services (including external and internal audit expenses), and telecommunications. Similarly, the cost of paying directors to serve on the Exchange's Board of Directors is also included in the Exchange's general shared expense cost driver.[40] These general shared expenses are incurred by the Exchange's parent company, MIH, as a direct result of operating the Exchange and its affiliated markets.

The Exchange employed a process to determine a reasonable percentage to allocate general shared expenses to the market data feeds pursuant to its multi-layered allocation process. First, general expenses were allocated among the Exchange and affiliated markets as described above. Then, the general shared expense assigned to the Exchange was allocated across core services of the Exchange, including market data. Then, these costs were further allocated to sub-categories within the final categories, *i.e.,* the market data feeds as sub-categories of market data. In determining the percentage of general shared expenses allocated to market data that ultimately apply to the market data feeds, the Exchange looked at the percentage allocations of each of the cost drivers and determined a reasonable allocation percentage. The Exchange also held meetings with senior management, department heads, and the Finance Team to determine the proper amount of the shared general expense to allocate to the market data feeds. The Exchange, therefore, believes it is reasonable to assign an allocation, in the range of allocations for other cost drivers, while continuing to ensure that this expense is only allocated once. Again, the general shared expenses are incurred by the Exchange's parent company as a result of operating the Exchange and its affiliated markets and it is therefore reasonable to allocate a percentage of those expenses to the Exchange and ultimately to specific product offerings such as the market data feeds.

Again, a portion of all shared expenses were allocated to the Exchange (and its affiliated markets) which, in turn, allocated a portion of that overall allocation to all market data products offered by the Exchange. The Exchange then allocated 2.0% of the portion allocated to market data. The Exchange believes this allocation percentage is reasonable because, while the overall dollar amount may be higher than other cost drivers, the 2.0% is based on and in line with the percentage allocations of each of the Exchange's other cost drivers. The percentage allocated to the market data feeds also reflects its importance to the Exchange's strategy and necessity towards the nature of the Exchange's overall operations, which is to provide a resilient, highly deterministic trading system that relies on faster market data feeds than the Exchange's competitors to maintain premium performance. This allocation reflects the Exchange's focus on providing and maintaining high performance market data services, of which the market data feeds are main contributors.

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Cost Analysis—Additional Discussion

In conducting its Cost Analysis, the Exchange did not allocate any of its expenses in full to any core service (including market data) and did not double-count any expenses. Instead, as described above, the Exchange allocated applicable cost drivers across its core services and used the same Cost Analysis to form the basis of this proposal and the filings the Exchange

[40] The Exchange notes that MEMX allocated a precise amount of 10% of the overall cost for directors in a similar non-transaction fee filing. *See* Securities Exchange Act Release No. 97130 (March 13, 2023), 88 FR 16491 (March 17, 2023) (SR–MEMX–2023–04). The Exchange does not calculate is expenses at that granular a level. Instead, director costs are included as part of the overall general allocation.

recently submitted proposing fees for certain connectivity and ports offered by the Exchange. For instance, in calculating the Human Resources expenses to be allocated to market data based upon the above described methodology, the Exchange has a team of employees dedicated to network infrastructure and with respect to such employees the Exchange allocated network infrastructure personnel with a high percentage of the cost of such personnel (9.1%) given their focus on functions necessary to provide market data and the remaining 90.9% was allocated to connectivity services, port services, transaction services, and membership services. The Exchange did not allocate any other Human Resources expense for providing market data to any other employee group, outside of a smaller allocation of 8.8% for the market data feeds of the cost associated with certain specified personnel who work closely with and support network infrastructure personnel.

In total, the Exchange allocated 8.9% of its personnel costs (Human Resources) to providing the market data feeds. In turn, the Exchange allocated the remaining 91.1% of its Human Resources expense to membership services, transaction services, connectivity services, and port services. Thus, again, the Exchange's allocations of cost across core services were based on real costs of operating the Exchange and were not double-counted across the core services or their associated revenue streams.

As another example, the Exchange allocated depreciation expense to all core services, including market data, but in different amounts. The Exchange believes it is reasonable to allocate the identified portion of such expense because such expense includes the actual cost of the computer equipment, such as dedicated servers, computers, laptops, monitors, information security appliances and storage, and network switching infrastructure equipment, including switches and taps that were purchased to operate and support the network. Without this equipment, the Exchange would not be able to operate the network and provide the market data feeds to its Equity Members and their customers. However, the Exchange did not allocate all of the depreciation and amortization expense toward the cost of providing the market data feeds, but instead allocated approximately 0.5% of the Exchange's overall depreciation and amortization expense to the market data feeds combined. The Exchange allocated the remaining depreciation and amortization expense (99.5%) toward the cost of providing transaction services, membership services, connectivity services, and port services.

The Exchange notes that its revenue estimates are based on projections across all potential revenue streams and will only be realized to the extent such revenue streams actually produce the revenue estimated. The Exchange does not yet know whether such expectations will be realized. For instance, in order to generate the revenue expected from the market data feeds, the Exchange will have to be successful in retaining existing clients that wish to maintain subscriptions to those market data feeds or in obtaining new clients that will purchase such services. Similarly, the Exchange will have to be successful in retaining a positive net capture on transaction fees in order to realize the anticipated revenue from transaction pricing.

The Exchange notes that the Cost Analysis is based on the Exchange's 2024 fiscal year of operations and projections. It is possible, however, that actual costs may be higher or lower. To the extent the Exchange sees growth in use of market data services it will receive additional revenue to offset future cost increases. However, if use of market data services is static or decreases, the Exchange might not realize the revenue that it anticipates or needs in order to cover applicable costs. Accordingly, the Exchange is committing to conduct a one-year review after implementation of these fees. The Exchange expects that it may propose to adjust fees at that time, to increase fees in the event that revenues fail to cover costs and a reasonable mark-up of such costs. Similarly, the Exchange may propose to decrease fees in the event that revenue materially exceeds our current projections. In addition, the Exchange will periodically conduct a review to inform its decision making on whether a fee change is appropriate (*e.g.,* to monitor for costs increasing/decreasing or subscribers increasing/decreasing, etc. in ways that suggest the then-current fees are becoming dislocated from the prior cost-based analysis) and would propose to increase fees in the event that revenues fail to cover its costs and a reasonable mark-up, or decrease fees in the event that revenue or the mark-up materially exceeds our current projections. In the event that the Exchange determines to propose a fee change, the results of a timely review, including an updated cost estimate, will be included in the rule filing proposing the fee change. More generally, the Exchange believes that it is appropriate for an exchange to refresh and update information about its relevant costs and revenues in seeking any future changes to fees, and the Exchange commits to do so.

Projected Revenue [41]

The proposed fees will allow the Exchange to cover certain costs incurred by the Exchange associated with creating, generating, and disseminating the market data feeds and the fact that the Exchange will need to fund future expenditures (increased costs, improvements, etc.). The Exchange routinely works to improve the performance of the network's hardware and software. The costs associated with maintaining and enhancing a state-of-the-art exchange network is a significant expense for the Exchange, and thus the Exchange believes that it is reasonable and appropriate to help offset those costs by amending fees for market data subscribers. Subscribers, particularly those of the market data feeds, expect the Exchange to provide this level of support so they continue to receive the performance they expect. This differentiates the Exchange from its competitors. As detailed above, the Exchange has five primary sources of revenue that it can potentially use to fund its operations: transaction fees, fees for connectivity services, membership and regulatory fees, and market data fees. Accordingly, the Exchange must cover its expenses from these five primary sources of revenue.

The Exchange's Cost Analysis estimates the annual cost to provide the market data feeds will equal $1,800,360. Based on projected subscribers and Users, the Exchange would generate annual revenue of approximately $1,980,000 for the market data feeds. The Exchange believes this represents a modest profit of 9.1% when compared to the cost of providing the market data feeds, which the Exchange believes is fair and reasonable after taking into account the costs related to creating, generating, and disseminating the market data feeds and the fact that the Exchange will need to fund future expenditures (increased costs, improvements, etc.).

Based on the above discussion, the Exchange believes that even if the Exchange earns the above revenue or incrementally more or less, the proposed fees are fair and reasonable because they will not result in pricing

[41] To estimate the potential number of subscribers and their anticipated use after the proposed fees are implemented, the Exchange surveyed and reviewed its current subscriber base, considered the number of current potential subscribers who may unsubscribe due to the proposed fees being implemented, and sought informal feedback from Equity Members and other subscribers.

that deviates from that of other exchanges or a supra-competitive profit, when comparing the total expense of the Exchange associated with providing the market data feeds versus the total projected revenue also associated with those market data feeds.

The Exchange did not charge any fees for the market data feeds since its inception in September 2020 and its allocation of costs to the market data feeds was part of a holistic allocation that also allocated costs to other core services without double-counting any expenses. The Exchange is owned by a holding company that is the parent company of four exchange markets and, therefore, the Exchange and its affiliated markets must allocate shared costs across all of those markets accordingly, pursuant to the above-described allocation methodology. In contrast, IEX and MEMX, which are currently each operating only one SRO, in their recent non-transaction fee filings allocate the entire amount of that same cost to a single SRO. This can result in lower profit margins for the non-transaction fees proposed by IEX and MEMX because the single allocated cost does not experience the efficiencies and synergies that result from sharing costs across multiple platforms.[42] The Exchange and its affiliated markets often share a single cost, which results in cost efficiencies that can cause a broader gap between the allocated cost amount and projected revenue, even though the fee levels being proposed are lower or competitive with competing markets (as described above). To the extent that the application of a cost-based standard results in Commission Staff making determinations as to the appropriateness of certain profit margins, the Commission Staff should consider whether the proposed fee level is comparable to, or competitive with, the same fee charged by competing exchanges and how different cost allocation methodologies (such as across multiple markets) may result in different profit margins for comparable fee levels. If Commission Staff is making determinations as to appropriate profit margins, the Exchange believes that the Commission should be clear to all market participants as to what they have determined is an appropriate profit margin and should apply such determinations consistently and, in the case of certain legacy exchanges, retroactively, if such standards are to avoid having a discriminatory effect. Further, the proposal reflects the Exchange's efforts to control its costs, which the Exchange does on an ongoing basis as a matter of good business practice. A potential profit margin should not be judged alone based on its size, but is also indicative of costs management and whether the ultimate fee reflects the value of the services provided. For example, a profit margin on one exchange should not be deemed excessive where that exchange has been successful in controlling its costs, but not excessive where on another exchange where that exchange is charging comparable fees but has a lower profit margin due to higher costs. Doing so could have the perverse effect of not incentivizing cost control where higher costs alone are used to justify fees increases.

Accordingly, while the Exchange is supportive of transparency around costs and potential margins (applied across all exchanges), as well as periodic review of revenues and applicable costs (as discussed below), the Exchange does not believe that these estimates should form the sole basis of whether or not a proposed fee is reasonable or can be adopted. Instead, the Exchange believes that the information should be used solely to confirm that an Exchange is not earning—or seeking to earn—supra-competitive profits, the standard set forth in the Staff Guidance. The Exchange believes the Cost Analysis and related projections in this filing demonstrate this fact.

The Exchange notes that the Cost Analysis is based on the Exchange's 2024 fiscal year of operations and projections. It is possible, however, that such costs will either decrease or increase. To the extent the Exchange sees growth in use of market data feeds it will receive additional revenue to offset future cost increases. However, if use of market data feeds is static or decreases, the Exchange might not realize the revenue that it anticipates or needs in order to cover applicable costs. Accordingly, the Exchange is committing to conduct a one-year review after implementation of these fees. The Exchange expects that it may propose to adjust fees at that time, to increase fees in the event that revenues fail to cover costs and a reasonable mark-up of such costs.

Similarly, the Exchange expects that it would propose to decrease fees in the event that revenue materially exceeds current projections. In addition, the Exchange will periodically conduct a review to inform its decision making on whether a fee change is appropriate (*e.g.,* to monitor for costs increasing/decreasing or subscribers increasing/decreasing, etc. in ways that suggest the then-current fees are becoming dislocated from the prior cost-based analysis) and expects that it would propose to increase fees in the event that revenues fail to cover its costs and a reasonable mark-up, or decrease fees in the event that revenue or the mark-up materially exceeds current projections. In the event that the Exchange determines to propose a fee change, the results of a timely review, including an updated cost estimate, will be included in the rule filing proposing the fee change. More generally, the Exchange believes that it is appropriate for an exchange to refresh and update information about its relevant costs and revenues in seeking any future changes to fees, and the Exchange commits to do so.

The Proposed Fees Are Reasonable and Comparable to the Fees Charged by Other Exchanges for Similar Data Products

Overall. Among other things, the Exchange relying upon a cost-plus model to determine a reasonable fee structure that is informed by the Exchange's understanding of different uses of the products by different types of participants. In this context, the Exchange believes the proposed fees overall are fair and reasonable as a form of cost recovery plus the possibility of a reasonable return for the Exchange's aggregate costs of offering the market data feeds. The Exchange believes the proposed fees are reasonable because they are designed to generate annual revenue to recoup some or all of Exchange's annual costs of providing the market data feeds with a reasonable mark-up. As discussed above, the Exchange estimates this fee filing will result in annual revenue of approximately $1,980,000, representing a potential mark-up of just 9.1% over the cost of providing market data feeds. Accordingly, the Exchange believes that this fee methodology is reasonable because it allows the Exchange to recoup all of its expenses for providing the market data feeds (with any additional revenue representing no more than what the Exchange believes to be a reasonable rate of return). The Exchange also believes that the proposed fees are reasonable because

[42] The Exchange acknowledges that IEX included in its proposal to adopt market data fees after offering market data for free an analysis of what its projected revenue would be if all of its existing customers continued to subscribe versus what its projected revenue would be if a limited number of customers subscribed due to the new fees. *See* Securities Exchange Act Release No. 94630 (April 7, 2022), 87 FR 21945 (April 13, 2022) (SR–IEX–2022–02). MEMX did not include a similar analysis in its recent filing to adopt market data fees. *See* Securities Exchange Act Release No. 97130 (March 13, 2023), 88 FR 16491 (March 17, 2023) (SR–MEMX–2023–04).

they are generally less than the fees charged by competing equities exchanges for comparable market data products, notwithstanding that the competing exchanges may have different system architectures that may result in different cost structures for the provision of market data.

The Exchange also believes the proposed fees are reasonable when compared to fees charged for comparable products by other exchanges, including comparable data feeds priced significantly higher than the Exchange's proposed fees. Overall, the Exchange's proposed fees are generally lower or similar to fees charged by other exchanges.[43] For this reason, the Exchange believes that the proposed fees are consistent with the Act generally, and Section 6(b)(5)[44] of the Act in particular. The Exchange believes that denying it the ability to adopt the proposed fees that would allow the Exchange to recoup its costs with a reasonable margin in a manner that is closer to parity with other exchanges, in effect, impedes its ability to compete, including in its pricing of transaction fees and ability to invest in competitive infrastructure and other offerings.

Internal Distribution Fees. The Exchange believes that it is reasonable to charge fees to access the market data feeds for Internal Distribution because of the value of such data to subscribers in their profit-generating activities. The Exchange also believes that the proposed monthly Internal Distribution fees are reasonable because they are similar to the amount charged by other exchanges for comparable data products. Specifically, the Exchange proposes to charge a monthly fee of $1,000.00 to Internal Distributors for the ToM feed and $2,000.00 for the DoM feed, both of which include last sale information. MEMX, Cboe BZX, and Cboe EDGX each charge Internal Distributors a monthly fee of $750.00 per month for their top-of-book products and $1,500.00 for their depth-of-book products, and charges separately for last sale information.[45] The Exchange notes that while its proposed fee for Internal Distributors may be slightly higher than these other exchanges, its other proposed fees are either equal to or significantly lower than other exchanges, as discussed below.

External Distribution Fees. The Exchange believes that it is reasonable to charge External Distribution fees for the market data feeds because vendors receive value from redistributing the data in their business products provided to their customers. The Exchange believes that charging External Distribution fees is reasonable because the vendors that would be charged such fees profit by re-transmitting the Exchange's market data to their customers. These fees would be charged only once per month to each vendor account that redistributes any of the market data feeds, regardless of the number of customers to which that vendor redistributes the data.

The Exchange also believes that the proposed monthly External Distribution fees are reasonable because they are equal to or lower than the amount charged by other exchanges for comparable data products. Specifically, the Exchange proposes to charge a monthly fee of $2,000.00 to External Distributor for the ToM feed and $2,500.00 for the DoM feed. The Exchange's proposed External Distribution fee for ToM is equal to or lower than the fees charged by MEMX, Cboe BZX, and Cboe EDGX to External Distributors of their depth-of-book products, who each charge $2,000.00, $2,500.00, and $2,250.00, respectively.[46] Meanwhile, the Exchange's proposed External Distribution fee for DoM is equal to the fees charged by MEMX, Cboe BYX, Cboe EDGA, and Cboe EDGX to External Distributors of their depth-of-book products.[47] Meanwhile, the Exchange's proposed External Distribution fee for DoM is lower than the $5,000.00 fee charged by Cboe BZX to External Distributors of its depth-of-book product.[48]

User Fees. The Exchange believes that having separate Professional and Non-Professional User fees for the market data feeds is reasonable because it will make the product more affordable and result in greater availability to Professional and Non-Professional Users. Setting a modest Non-Professional User fee is reasonable because it provides an additional method for Non-Professional Users to access the market data feeds by providing the same data that is available to Professional Users. The proposed monthly Professional User and Non-Professional User fees are reasonable because they equal to or are lower than the fees charged by other exchanges for comparable data products. For example, the Exchange's proposed Professional User fees of $2.00 for ToM and $30.00 for DoM is lower than the same fee charged by Cboe BZX and Cboe EDGX, who each charge $4.00 for their top-of-book products and $40.00 for their depth-of-book products.[49] The Exchange's proposed Non-Professional User fees of $0.10 for ToM is equal to the same fee charged by Cboe BZX and Cboe EDGX.[50]

Meanwhile, the Exchange's proposed Non-Professional User fees of $3.00 for DoM is equal to the same fee charged by MEMX and lower than the same fee charged by Cboe BZX and Cboe EDGX, who each charge $5.00 for their depth-of-book products.[51]

The Exchange also believes that the proposal to require reporting of individual Users, but not devices, is reasonable as this too will eliminate unnecessary audit risk that can arise when recipients are required to apply complex counting rules such as whether or not to count devices or whether an individual accessing the same data through multiple devices should be counted once or multiple times.

The Exchange also believes it is reasonable to adopt an Enterprise Fee because this would allow a market participant to disseminate such data feeds to an unlimited number of Users without the necessity of counting such Users. As this is an optional subscription, a data recipient is able to determine whether it prefers to count Users and report such Users to the Exchange or not, and also whether it is more economically advantageous to count and pay for specific Users or to subscribe to the Enterprise Fee. The Exchange also notes that only a market participant with a substantial number of Users would likely choose to subscribe for and pay the Enterprise Fee.

The proposed monthly Enterprise fees are reasonable because they equal to or are lower than the fees charged by other exchanges for comparable data products. For example, the Exchange's proposed Enterprise fee of $15,000.00 per month for ToM equals the same fee

[43] *See* MEMX Fee Schedule, *available at, https://info.memxtrading.com/membership-fees/* (''MEMX Fee Schedule''); Cboe BYX Fee Schedule, *available at, https://www.cboe.com/us/equities/membership/fee_schedule/byx/*; Cboe BZX Fee Schedule, *available at, https://www.cboe.com/us/equities/membership/fee_schedule/bzx/*; Cboe EDGA Fee Schedule, *available at, https://www.cboe.com/us/equities/membership/fee_schedule/edga/*; and Cboe EDGX Fee Schedule, *available at, https://www.cboe.com/us/equities/membership/fee_schedule/edgx/.*

[44] 15 U.S.C. 78f(b)(5).

[45] *See* MEMX Fee Schedule, *supra* note 43.

[46] *See* MEMX Fee Schedule, Cboe BZX Fee Schedule, *and* Cboe EDGX Fee Schedule, *supra* note 43.

[47] *See* MEMX Fee Schedule, Cboe BYX Fee Schedule, Cboe EDGA Fee Schedule, *and* Cboe EDGX Fee Schedule, *id.*

[48] *See* Cboe BZX Fee Schedule, *id.*

[49] *See* Cboe BZX Fee Schedule *and* Cboe EDGX Fee Schedule, *id.*

[50] *Id.*

[51] *See* MEMX Fee Schedule, Cboe BZX Fee Schedule, *and* Cboe EDGX Fee Schedule, *supra* note 43.

charged by Cboe BZX and Cboe EDGX.[52] However, the Exchange's proposed Enterprise fee of $25,000.00 per month for DoM is much lower than the same fee charged by Cboe BZX and Cboe EDGX, who each charge $100,000.00 per month.[53]

Non-Display Use Fees. The Exchange believes the proposed Non-Display Usage fees are reasonable because they reflect the value of the data to the data recipients in their profit-generating activities and do not impose the burden of counting non-display devices.

The Exchange believes that the proposed Non-Display Usage fees reflect the significant value of the non-display data use to data recipients, whom purchase such data on a voluntary basis. Non-display data can be used by data recipients for a wide variety of profit-generating purposes, including proprietary and agency trading and smart order routing, as well as by data recipients that operate Trading Platforms that compete directly with the Exchange for order flow. The data also can be used for a variety of non-trading purposes that indirectly support trading, such as risk management and compliance. Although some of these non-trading uses do not directly generate revenues, they can nonetheless substantially reduce a recipient's costs by automating such functions so that they can be carried out in a more efficient and accurate manner and reduce errors and labor costs, thereby benefiting recipients. The Exchange believes that charging for non-trading uses is reasonable because data recipients can derive substantial value from such uses, for example, by automating tasks so that can be performed more quickly and accurately and less expensively than if they were performed manually.

Previously, the non-display use data pricing policies of many exchanges required customers to count, and the exchanges to audit the count of, the number of non-display devices used by a customer. As non-display use grew more prevalent and varied, however, exchanges received an increasing number of complaints about the impracticality and administrative burden associated with that approach. In response, several exchanges developed a non-display use pricing structure that does not require non-display devices to be counted or those counts to be audited, and instead categorizes different types of use. The Exchange proposes to distinguish between non-display use for the operation of a Trading Platform and other non-display use, which is similar to exchanges such as MEMX, BZX, and EDGX,[54] while other exchanges maintain additional categories and in many cases charge multiple times for different types of non-display use or the operation of multiple Trading Platforms.[55]

The Exchange believes that it is reasonable to segment the fee for non-display use into these two categories. As noted above, the uses to which customers can put the market data feeds are numerous and varied, and the Exchange believes that charging separate fees for these separate categories of use is reasonable because it reflects the actual value the customer derives from the data, based upon how the customer makes use of the data.

The Exchange believes that the proposed fees for Non-Display Usage for ToM are reasonable because the Exchange's proposed fee of $1,000.00 per month is less than the amounts charged by several other exchanges for comparable data products.[56] The Exchange also believes that the proposed fees for Non-Display Usage for DoM are reasonable because the Exchange's proposed fee of $2,500.00 per month for DoM equals the same fee charged by MEMX for its depth-of-book product.[57] The proposed fees are also significantly less than the amounts charged by several other exchanges for comparable data products.[58] In fact, the Exchange's proposed fees for Non-Display Usage fee may be even lower because the Exchange would allow subscribers to the DoM feed to also receive the ToM feed for no additional charge. The Exchange believes that the proposed fees directly and appropriately reflect the significant value of using data on a non-display basis in a wide range of computer-automated functions relating to both trading and non-trading activities and that the number and range of these functions continue to grow through innovation and technology developments. Further, the Exchange benefits from other non-display use by market participants (including the fact that the Exchange receives orders resulting from algorithms and routers) and both the Exchange and other participants benefit from other non-display use by market participants when such use is to support more broadly beneficial functions such as risk management and compliance.

The Exchange believes that the proposed fees for Non-Display Usage for ToM are reasonable because the Exchange's proposed fee of $2,500.00 per month is less than the amounts charged by several other exchanges for comparable data products,[59] which also charge per Trading Platform operated by a data subscriber subject to a cap in most cases, rather than charging per subscriber, as proposed by the Exchange.[60] The Exchange also believes that it is reasonable to charge the proposed fees for non-display use for operation of a Trading Platform of the DoM feed because its proposed fee of $2,500.00 per month equals the same fee charged by MEMX for its depth-of-book product.[61] The proposed fees are also significantly less than the amounts charged by Cboe BZX and Cboe EDGA, who each charge $5,000.00 per month, for comparable data products.[62] In fact, the Exchange's proposed fees for Non-Display Usage fee for Trading Platform may be even lower because the Exchange would allow subscribers to the DoM feed to also receive the ToM feed for no additional charge. The proposed fee is also significantly less than the amounts charged by several other exchanges for comparable data products, which also charge per Trading Platform operated by a data subscriber subject to a cap in most cases, rather than charging per subscriber, as proposed by the Exchange.[63] With respect to alternative trading systems, or ATSs, such platforms can utilize the Exchange Data Feeds to form prices for trading on such platforms but are not required to do so and can instead utilize SIP data. Currently, no ATS approved to trade NMS stocks subscribes to the Exchange's market data feeds.[64] With respect to other exchanges, which may choose to use the market data feeds for

[52] *See* Cboe BZX Fee Schedule *and* Cboe EDGX Fee Schedule, *id.*

[53] *Id.*

[54] *See* Cboe BZX Fee Schedule *and* Cboe EDGX Fee Schedule, *id.*

[55] *See* NYSE Proprietary Market Data Pricing Guide, dated May 4, 2022, *available at https://www.nyse.com/publicdocs/nyse/data/NYSE_Market_Data_Pricing.pdf,* and the Nasdaq Global Data Products pricing list, *available at https://nasdaqtrader.com/Trader.aspx?id=DPUSdata.*

[56] *Id.*

[57] *See* MEMX Fee Schedule, *supra* note 43.

[58] *See supra* note 55.

[59] *Id.*

[60] *See supra* note 55. The Exchange notes that MEMX also charges per subscriber, as proposed herein. *See* MEMX Fee Schedule *supra* note 43.

[61] *Id.*

[62] *See* Cboe BZX Fee Schedule *and* Cboe EDGX Fee Schedule, *supra* note 43. *See also supra* note 55.

[63] *See supra* note 55. The Exchange notes that MEMX also charges per subscriber, as proposed herein. *See* MEMX Fee Schedule *supra* note 43.

[64] MIAX Pearl Equities internal data regarding non-display use by Trading Platforms. As of March 15, 2024, there were currently 32 ATSs that had filed an effective Form ATS–N with the Commission to trade NMS stocks. *See https://www.sec.gov/divisions/marketreg/form-ats-n-filings.htm#ats-n.*

Regulation NMS compliance and order routing, the Exchange notes that several exchange competitors of the Exchange have not subscribed to any of the market data feeds and instead utilize SIP data for such purposes.[65] Accordingly, both ATSs and other exchanges clearly have a choice whether to subscribe to the Exchange's market data feeds.

The proposed Non-Display Usage fees are also reasonable because they take into account the extra value of receiving the data for Non-Display Usage that includes a rich set of information including top of book quotations, depth-of-book quotations, executions and other information. The Exchange believes that the proposed fees directly and appropriately reflect the significant value of using the market data feeds on a non-display basis in a wide range of computer-automated functions relating to both trading and non-trading activities and that the number and range of these functions continue to grow through innovation and technology developments.[66]

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For all of the foregoing reasons, the Exchange believes that the proposed fees for the market data feeds are reasonable.

There Are Reasonable Substitutes for the Market Data Feeds

Each equities exchange offers top-of-book quotation and last sale information based on their own quotation and trading activity that is substantially similar to the information provided by the Exchange through the ToM data feed. Further, the quote and last sale data contained in the ToM data feed is identical to the data sent to the securities information processors (''SIPs'') distributing consolidated data pursuant to the CTA/CQ Plan and the UTP Plan.[67] Accordingly, market participants can substitute ToM data with feeds from other exchanges and/or through the SIPs. Exchange top-of-book data is therefore widely available today from a number of different sources.

The Exchange notes DoM is entirely optional. The Exchange is not required to make the proprietary data products that are the subject of this proposed rule change available or to offer any specific pricing alternatives to any customers, nor is any firm or investor required to purchase the Exchange's data products. Unlike some other data products (*e.g.,* the consolidated quotation and last-sale information feeds) that firms are required to purchase in order to fulfil regulatory obligations,[68] a customer's decision whether to purchase any of the Exchange's proprietary market data feeds is entirely discretionary. Most firms that choose to subscribe to proprietary market data feeds from the Exchange and its affiliates do so for the primary goals of using them to increase their revenues, reduce their expenses, and in some instances compete directly with the Exchange's trading services. Such firms are able to determine for themselves whether or not the products in question or any other similar products are attractively priced. If market data feeds from the Exchange and its affiliates do not provide sufficient value to firms based on the uses those firms may have for it, such firms may simply choose to conduct their business operations in ways that do not use the products.

Equitable Allocation

Overall. The Exchange believes that its proposed fees are reasonable, fair, and equitable, and not unfairly discriminatory because they are designed to align fees with services provided. The Exchange believes the proposed fees for the market data feeds are allocated fairly and equitably among the various categories of users of the feeds, and any differences among categories of users are justified and appropriate.

The Exchange believes that the proposed fees are equitably allocated because they will apply uniformly to all data recipients that choose to subscribe to the market data feeds. Any subscriber or vendor that chooses to subscribe to the market data feeds is subject to the same Fee Schedule, regardless of what type of business they operate, and the decision to subscribe to one or more market data feeds is based on objective differences in usage of market data feeds among different Equity Members, which are still ultimately in the control of any particular Equity Member. The Exchange believes the proposed pricing of the market data feeds is equitably allocated because it is based, in part, upon the amount of information contained in each data feed and the value of that information to market participants.

Internal Distributor Fees. The Exchange believes the proposed monthly fees for Internal Distributors of the market data feeds are equitably allocated because they would be charged on an equal basis to all data recipients that receive the market data feeds for internal distribution, regardless of what type of business they operate.

External Distributor Fees. The Exchange believes the proposed monthly fees for External Distributors of the market data feeds are equitably allocated and not unfairly discriminatory because they would be charged on an equal basis to all data recipients that receive the market data feeds that choose to redistribute the feeds externally, regardless of what business they operate. The Exchange also believes that the proposed monthly fees for External Distributors are equitably allocated when compared to lower proposed fees for Internal Distributors because data recipients that are externally distributing market data feeds are able to monetize such distribution and spread such costs amongst multiple third party data recipients, whereas the Internal Distributor fee is applicable to use by a single data recipient (and its affiliates).

The Exchange believes that it is reasonable and equitable discriminatory to assess Internal Distributors fees that are less than the fees assessed for External Distributors for subscriptions to the market data feeds because Internal Distributors have limited, restricted usage rights to the market data, as compared to External Distributors, which have more expansive usage rights. All Equity Members and non-Equity Members that decide to receive any market data feed of the Exchange must first execute, among other things, the MIAX Exchange Group Exchange Data Agreement (the

[65] *See, e.g.,* BZX Rule 11.26, EDGA Rule 13.4, EDGX Rule 13.4, and Long Term Stock Exchange, Inc. Rule 11.4010(a), each of which discloses the data feeds used by each respective exchange and state that SIP products are used with respect to MIAX Pearl Equities.

[66] *See also* Exchange Act Release No. 69157 (March 18, 2013), 78 FR 17946, 17949 (March 25, 2013) (SR–CTA/CQ–2013–01) (''[D]ata feeds have become more valuable, as recipients now use them to perform a far larger array of non-display functions. Some firms even base their business models on the incorporation of data feeds into black boxes and application programming interfaces that apply trading algorithms to the data, but that do not require widespread data access by the firm's employees. As a result, these firms pay little for data usage beyond access fees, yet their data access and usage is critical to their businesses.'').

[67] The Exchange notes that it makes available to subscribers that is included in the ToM data feed no earlier than the time at which the Exchange sends that data to the SIPs.

[68] The Exchange notes that broker-dealers are not required to purchase proprietary market data to comply with their best execution obligations. *See* In the Matter of the Application of Securities Industry and Financial Markets Association for Review of Actions Taken by Self-Regulatory Organizations, Release Nos. 34–72182; AP–3–15350; AP–3–15351 (May 16, 2014). Similarly, there is no requirement in Regulation NMS or any other rule that proprietary data be utilized for order routing decisions, and some broker-dealers and ATSs have chosen not to do so.

''Exchange Data Agreement'').[69] Pursuant to the Exchange Data Agreement, Internal Distributors are restricted to the ''internal use'' of any market data they receive. This means that Internal Distributors may only distribute the Exchange's market data to the recipient's officers and employees and its affiliates.[70] External Distributors may distribute the Exchange's market data to persons who are not officers, employees or affiliates of the External Distributor,[71] and may charge their own fees for the redistribution of such market data. External Distributors may monetize their receipt of the market data feeds by charging their customers fees for receipt of the Exchange's market data feeds. Internal Distributors do not have the same ability to monetize the Exchange's market data feeds. Accordingly, the Exchange believes it is fair, reasonable and not unfairly discriminatory to assess External Distributors a higher fee for the Exchange's market data feeds as External Distributors have greater usage rights to commercialize such market data and can adjust their own fee structures if necessary.

The Exchange also utilizes more resources to support External Distributors versus Internal Distributors, as External Distributors have reporting and monitoring obligations that Internal Distributors do not have, thus requiring additional time and effort of Exchange staff. For example, External Distributors have monthly reporting requirements under the Exchange's Market Data Policies.[72] Exchange staff must then, in turn, process and review information reported by External Distributors to ensure the External Distributors are redistributing the market data feeds in compliance with the Exchange's Market Data Agreement and Policies.

The Exchange believes the proposed fees are equitable because the fee level results in a reasonable and equitable allocation of fees amongst subscribers for similar services, depending on whether the subscriber is an Internal or External Distributor. Moreover, the decision as to whether or not to purchase market data is entirely optional to all market participants. Potential purchasers are not required to purchase the market data, and the Exchange is not required to make the market data available. Purchasers may request the data at any time or may decline to purchase such data. The allocation of fees among users is fair and reasonable because, if market participants decide not to subscribe to the data feed, firms can discontinue their use of the market data feeds.

User Fees. The Exchange believes that the fee structure differentiating Professional User fees from Non-Professional User fees for display use is equitable. This structure has long been used by other exchanges and the SIPs to reduce the price of data to Non-Professional Users and make it more broadly available.[73] Offering the market data feeds to Non-Professional Users at a lower cost than Professional Users results in greater equity among data recipients, as Professional Users are categorized as such based on their employment and participation in financial markets, and thus, are compensated to participate in the markets. While Non-Professional Users too can receive significant financial benefits through their participation in the markets, the Exchange believes it is reasonable to charge more to those Users who are more directly engaged in the markets.

The Exchange believes it is equitable to adopt User fees for the DoM feed that are higher than the User fees for the ToM feed because, as described above, DoM contains significantly more data than the ToM feed. The Exchange believes it is equitable to have pricing based, in part, upon the amount of information contained in each data feed and the value of that information to market participants.

The Exchange also believes it is equitable to adopt an Enterprise Fee because this would allow a market participant to disseminate such data feeds to an unlimited number of Users without the necessity of counting such Users. As this is an optional subscription, a data recipient is able to determine whether it prefers to count Users and report such Users to the Exchange or not, and also whether it is more economically advantageous to count and pay for specific Users or to subscribe to the Enterprise Fee.

Non-Display Use Fees. The Exchange believes the proposed Non-Display Usage fees are equitably allocated because they would require subscribers to pay fees only for the uses they actually make of the data. As noted above, non-display data can be used by data recipients for a wide variety of profit-generating purposes (including trading and order routing) as well as purposes that do not directly generate revenues (such as risk management and compliance) but nonetheless substantially reduce the recipient's costs by automating certain functions. The Exchange believes that it is equitable to charge non-display data subscribers that use the market data feeds for purposes other than operation of a Trading Platform as proposed because all such subscribers would have the ability to use such data for as many non-display uses as they wish for one low fee. As noted above, this structure is comparable to that in place for the BZX Depth feed but several other exchanges charge multiple non-display fees to the same client to the extent they use a data feed in several different trading platforms or for several types of non-display use.[74]

The Exchange further believes that the fees for non-display use for operation of a Trading Platform and for non-display use other than operation of a Trading Platform are equitable because the Exchange is imposing the same flat fee for each category of non-display use.

The Exchange believes that it is equitable to charge a single fee per subscriber rather than multiple fees for a subscriber that operates more than one Trading Platform because operators of Trading Platforms are many times viewed as a single competing venue or group, even if there are multiple liquidity pools operated by the same competitor.

* * * * *

For all of the foregoing reasons, the Exchange believes that the proposed fees for the market data feeds are equitably allocated.

The Proposed Fees Are Not Unfairly Discriminatory

The Exchange believes the proposed fees are not unfairly discriminatory because any differences in the application of the fees are based on meaningful distinctions between customers, and those meaningful distinctions are not unfairly discriminatory between customers.

Overall. The Exchange believes that the proposed fees are not unfairly discriminatory because they would apply to all data recipients that choose to subscribe to the same market data feed(s). Any vendor or subscriber that chooses to subscribe to the market data feeds is subject to the same Fee

[69] *See* Exchange Data Agreement, *available at https://www.miaxglobal.com/markets/us-equities/pearl-equities/market-data-vendor-agreements.*

[70] *See id.*

[71] *See id.*

[72] *See* Section 6 of the Exchange's Market Data Agreement, *supra* note 69.

[73] *See, e.g.,* Securities Exchange Act Release No. 59544 (March 9, 2009), 74 FR 11162 (March 16, 2009) (SR–NYSE–2008–131) (establishing the $15 Non-Professional User Fee (Per User) for NYSE OpenBook); Securities Exchange Act Release No. 20002, File No. S7–433 (July 22, 1983), 48 FR 34552 (July 29, 1983) (establishing Non-Professional fees for CTA data); NASDAQ BX Equity 7 Pricing Schedule, Section 123.

[74] *See supra* note 55.

Schedule, regardless of what type of business they operate. Because the proposed fees for DoM are higher, vendors and subscribers seeking lower cost options may instead choose to receive data from the SIPs or through the ToM feed for a lower cost. Alternatively, vendors and subscribers can choose to pay for the DoM feed to receive data in a single feed with depth-of-book information if such information is valuable to such vendors or subscribers. The Exchange notes that vendors or subscribers can also choose to subscribe to a combination of data feeds for redundancy purposes or to use different feeds for different purposes. In sum, each vendor or subscriber has the ability to choose the best business solution for itself. The Exchange does not believe it is unfairly discriminatory to base pricing upon the amount of information contained in each data feed and the value of that information to market participants. As described above, the ToM feed can be utilized to trade on the Exchange but contain less information than that is available on the DoM feed (*i.e.,* even for a subscriber who takes both feeds, such feeds do not contain depth-of-book information). Thus, the Exchange believes it is not unfairly discriminatory for the products to be priced as proposed, with ToM having the lowest price and DoM a higher price.

Internal Distributor Fees. The Exchange believes the proposed monthly fees for Internal Distributors are not unfairly discriminatory because they would be charged on an equal basis to all data recipients that receive the same market data feed(s) for internal distribution, regardless of what type of business they operate.

External Distributor Fees. The Exchange believes the proposed monthly fees for redistributing the market data feeds are not unfairly discriminatory because they would be charged on an equal basis to all data recipients that receive the same market data feed(s) that choose to redistribute the feed(s) externally. The Exchange also believes that having higher monthly fees for External Distributors than Internal Distributors is not unfairly discriminatory because data recipients that are externally distributing the market data feeds are able to monetize such distribution and spread such costs amongst multiple third party data recipients, whereas the Internal Distributor fee is applicable to use by a single data recipient (and its affiliates).

User Fees. The Exchange believes that the fee structure differentiating Professional User fees from Non-Professional User fees for display use is not unfairly discriminatory. This structure has long been used by other exchanges and the SIPs to reduce the price of data to Non-Professional Users and make it more broadly available.[75] Offering the market data feeds to Non-Professional Users with the same data as is available to Professional Users, albeit at a lower cost, results in greater equity among data recipients. These User fees would be charged uniformly to all individuals that have access to the market data feeds based on the category of User.

The Exchange also believes the proposed User fees for DoM are not unfairly discriminatory, with higher fees for Professional Users than Non-Professional Users, because Non-Professional Users may have less ability to pay for such data than Professional Users as well as less opportunity to profit from their usage of such data. The Exchange also believes the proposed User fees for DoM are not unfairly discriminatory, even though substantially higher than the proposed User fees for ToM because, as described above, DoM has significantly more information than ToM and is thus potentially more valuable to such Users.

The Exchange further believes that its proposal to adopt an Enterprise Fee is not unfairly discriminatory because this optional alternatives to counting and paying for specific Users will provide market participants the ability to provide information from the market data feeds to large numbers of Users without counting and paying for each individual User.

Non-Display Use Fees. The Exchange believes the proposed Non-Display Usage fees are not unfairly discriminatory because they would require subscribers for non-display use to pay fees depending on their use of the data, either for operation of a Trading Platform or not, but would not impose multiple fees to the extent a subscriber operates multiple Trading Platforms or has multiple different types of non-display use. As noted above, non-display data can be used by data recipients for a wide variety of profit-generating purposes as well as purposes that do not directly generate revenues but nonetheless substantially reduce the recipient's costs by automating certain functions. This segmented fee structure is not unfairly discriminatory because no subscriber of non-display data would be charged a fee for a category of use in which it did not actually engage.

The Exchange believes that it is not unreasonably discriminatory to charge a single fee for an operator of Trading Platforms that operates more than one Trading Platform because operators of Trading Platforms are many times viewed as a single competing venue or group, even if there a multiple liquidity pools operated by the same competitor. The Exchange again notes that certain competitors to the Exchange charge for non-display usage per Trading Platform,[76] in contrast to the Exchange's proposal. In turn, to the extent they subscribe to the market data feeds, these same competitors will benefit from the Exchange's pricing model to the extent they operate multiple Trading Platforms (as most do) by paying a single fee rather than paying for each Trading Platform that they operate that consumes the market data feeds.

* * * * *

For all of the foregoing reasons, the Exchange believes that the proposed fees for the Exchange's market data feeds are not unfairly discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[77] 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.

Intra-Market Competition

The Exchange does not believe that the proposed fees place certain market participants at a relative disadvantage to other market participants because, as noted above, the proposed fees are associated with usage of the data feed by each market participant based on whether the market participant internally or externally distributes the Exchange data, which are still ultimately in the control of any particular Equity Member, and such fees do not impose a barrier to entry to smaller participants. Accordingly, the proposed fees do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the allocation of the proposed fees reflects the types of data consumed by various market participants and their usage thereof.

Inter-Market Competition

The Exchange does not believe the proposed fees place an undue burden on competition on other SROs that is not necessary or appropriate. In particular, market participants are not forced to subscribe to either data feed, as described above. Additionally, other exchanges have similar market data fees

[75] *See supra* note 73.

[76] *See supra* note 55.

[77] 15 U.S.C. 78f(b)(8).

with comparable rates in place for their participants.[78] The proposed fees are based on actual costs and are designed to enable the Exchange to recoup its applicable costs with the possibility of a reasonable profit on its investment as described in the Purpose and Statutory Basis sections. Competing exchanges are free to adopt comparable fee structures subject to the Commission's rule filing process. Allowing the Exchange, or any new market entrant, to waive fees for a period of time to allow it to become established encourages market entry and thereby ultimately promotes competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[79] and Rule 19b–4(f)(2)[80] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–PEARL–2024–15 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–PEARL–2024–15. 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–PEARL–2024–15 and should be submitted on or before May 1, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[81]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–07539 Filed 4–9–24; 8:45 am]

BILLING CODE 8011–01–P

[78] *See supra* note 43.

[79] 15 U.S.C. 78s(b)(3)(A)(ii).

[80] 17 CFR 240.19b–4(f)(2).

[81] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission Small Business Capital Formation Advisory Committee will hold a public meeting on Monday, May 6, 2024, at the Commission's headquarters and via videoconference.

PLACE: The meeting will be hybrid, with some Committee members attending by remote means (videoconference) and others in-person at the Commission's headquarters, 100 F Street NE, Washington, DC 20549, in Multi-Purpose Room LL–006. Members of the public may watch the webcast of the meeting on the Commission's website at *www.sec.gov.*

STATUS: The meeting will begin at 10:00 a.m. (ET) and will be open to the public via webcast on the Commission's website at *www.sec.gov.* This Sunshine Act notice is being issued because a majority of the Commission may attend the meeting.

MATTERS TO BE CONSIDERED: The agenda for the meeting includes matters relating to rules and regulations affecting small and emerging businesses and their investors under the federal securities laws.

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: April 8, 2024.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2024–07666 Filed 4–8–24; 11:15 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice: 12374]

U.S. Advisory Commission on Public Diplomacy; Notice of Meeting

The U.S. Advisory Commission on Public Diplomacy (ACPD) will hold an in-person public meeting with online access from 12:30 p.m. until 1:45 p.m., Wednesday, May 15, 2024. A panel of experts will review and discuss the Commission's most recent Special Report, The Global Engagement Center: A Historical Overview. The meeting will be held at George Washington University's Elliot School of International Affairs, Room 602, 1957 E Street NW, Washington, DC 20052.

This meeting is open to the public, including the media and members and staff of governmental and non-governmental organizations. To attend the event in-person or virtually, please register at *https://bit.ly/ACPDMtng5-15.* Doors will open at 12 p.m. To request reasonable accommodation, please email ACPD Program Assistant Kristy Zamary at *ZamaryKK@state.gov.* Please send any request for reasonable accommodation no later than Wednesday, May 1, 2024. Requests

received after that date will be considered but might not be possible to fulfill.

Since 1948, the ACPD has been charged with appraising activities intended to understand, inform, and influence foreign publics and to increase the understanding of, and support for, these same activities. The ACPD conducts research that provides honest assessments of public diplomacy efforts, and disseminates findings through reports, white papers, and other publications. It also holds public symposiums that generate informed discussions on public diplomacy issues and events. The Commission reports to the President, Secretary of State, and Congress and is supported by the Office of the Under Secretary of State for Public Diplomacy and Public Affairs.

For more information on the U.S. Advisory Commission on Public Diplomacy, please visit *https://bit.ly/ACPDSite,* or contact Executive Director Vivian S. Walker at *WalkerVS@state.gov* or Senior Advisor Jeff Ridenour at *RidenourJM@state.gov.*

(Authority: 22 U.S.C. 2651a, 22 U.S.C. 1469, 5 U.S.C. 1001 *et seq.,* and 41 CFR 102–3.150.)

Jeffrey M. Ridenour,

Senior Advisor, U.S. Advisory Commission on Public Diplomacy, Department of State.

[FR Doc. 2024–07587 Filed 4–9–24; 8:45 am]

BILLING CODE 4710–45–P

DEPARTMENT OF STATE

[Delegation of Authority No. 553]

Delegation of Authority—Authorities of the Secretary

By virtue of the authority vested in me as Secretary of State by the laws of the United States, including 22 U.S.C. 2651a, I hereby delegate to the Under Secretary for Political Affairs and the Under Secretary for Management, to the extent authorized by law, all authorities and functions vested in the Secretary of State or the head of agency by any act, order, determination, delegation of authority, regulation, or executive order, now or hereafter issued. This delegation includes all authorities and functions that have been or may be delegated or redelegated to other Department officials but does not repeal delegations to such officials.

Provided that, this delegation shall apply only when the Secretary, the Deputy Secretary, and the Deputy Secretary for Management and Resources are travelling, on leave, unavailable, or when the Secretary or either Deputy Secretary requests that one of these Under Secretaries exercise such authorities and functions.

The Secretary of State, the Deputy Secretary of State and the Deputy Secretary of State for Management and Resources may exercise any function or authority delegated by this delegation. This delegation of authority does not rescind or modify any other delegation of authority.

This document shall be published in the **Federal Register**.

Dated: March 29, 2024.

Antony J. Blinken,

Secretary of State.

[FR Doc. 2024–07546 Filed 4–9–24; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice: 12373]

Notice of Determinations; Additional Culturally Significant Objects Being Imported for Exhibition—Determinations: ''Guillaume Lethière'' Exhibition

SUMMARY: On February 2, 2024, notice was published in the **Federal Register** of determinations pertaining to certain objects to be included in an exhibition entitled ''Guillaume Lethière'' and to be temporarily conserved. Notice is hereby given of the following determinations: I hereby determine that certain additional objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the aforesaid exhibition at the Sterling and Francine Clark Art Institute, Williamstown, Massachusetts, and at possible additional venues yet to be determined, are of cultural significance, and, further, that their 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. The notice of determinations published on February 2, 2024, appears at 89 FR 7434.

Nicole L. Elkon,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2024–07545 Filed 4–9–24; 8:45 am]

BILLING CODE 4710–05–P

SURFACE TRANSPORTATION BOARD

[Docket No. AB 1339X]

Walkersville Southern Railroad, Inc.—Discontinuance of Service Exemption—in Frederick County, Md.; Correction

In notice document 2024–07299, appearing on pages 24084–24085 in the issue of Friday, April 5, 2024, make the following corrections:

—On page 24085, in the first column, the sentence ''On March 18, 2024, Frederick County, Md. (Frederick County), filed a request for a notice of interim trail use or abandonment (NITU) to negotiate with CSXT to establish interim trail use and rail banking for the Line, under the National Trails System Act, 16 U.S.C. 1247(d),'' is corrected to read ''On March 18, 2024, Frederick County, Md. (Frederick County), filed a request for a notice of interim trail use or abandonment (NITU) to negotiate with MTA to establish interim trail use and rail banking for the Line, under the National Trails System Act, 16 U.S.C. 1247(d)''.

—On page 24085, in the first column, the sentence ''Also on March 18, MTA filed a letter agreeing to negotiate with MTA toward a possible interim trail use/rail banking arrangement for the Line'' is corrected to read ''Also on March 18, MTA filed a letter agreeing to negotiate with Frederick County toward a possible interim trail use/rail banking arrangement for the Line''.

Dated: April 5, 2024.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2024–07601 Filed 4–9–24; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Meeting; Commercial Space Transportation Advisory Committee

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

ACTION: Notice of Commercial Space Transportation Advisory Committee (COMSTAC) meeting.

SUMMARY: This notice announces a meeting of the COMSTAC.

DATES: The meeting will take place on April 23, 2024, from 9:00 a.m. to 4:00 p.m. Eastern Time.

ADDRESSES: The FAA will post instructions on how to virtually attend the meeting, copies of meeting minutes, and a detailed agenda will be posted on the COMSTAC website at: *https://www.faa.gov/space/additional_information/comstac/.*

FOR FURTHER INFORMATION CONTACT: Brian A. Verna, Designated Federal Officer, U.S. Department of Transportation, at *brian.verna@faa.gov* or 202–267–1710. Submit any committee-related request to the person listed in this section.

SUPPLEMENTARY INFORMATION:

I. Background

The U.S. Department of Transportation created the Commercial Space Transportation Advisory Committee under the Federal Advisory Committee Act (FACA) in accordance with Public Law 92–463. Since its inception, industry-led COMSTAC has provided information, advice, and recommendations to the U.S. Department of Transportation through FAA regarding technology, business, and policy issues relevant to oversight of the U.S. commercial space transportation sector.

II. Proposed Agenda

- Welcome Remarks
  - Designated Federal Officer
  - COMSTAC Chair and Vice Chair
  - Associate Administrator for AST
- COMSTAC discussion on taskings
- FAA briefing on addressing COMSTAC recommendations
- Public Comment Period
- Closing Comments
- Adjournment

III. Public Participation

The meeting listed in this notice will be open to the public per 41 CFR 102–3.150(a) meeting notice requirements, both in-person and virtually. Please see the website no later than five working days before the meeting for details on viewing the meeting on YouTube.

If you are in need of assistance or require a reasonable accommodation for this meeting, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section at least 10 calendar days before the meeting. The FAA can make sign and oral interpretation available if it is requested 10 calendar days before the meeting.

Interested members of the public may submit relevant written statements for the COMSTAC members to consider under the advisory process. Statements may concern the issues and agenda items mentioned above and/or additional issues that may be relevant to the U.S. commercial space transportation industry. Interested parties wishing to submit written statements should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section in writing (mail or email) by April 19, 2024, so that the information is available to COMSTAC members for their review and consideration before the meeting. Written statements should be in the following formats: one hard copy with original signature and/or one electronic copy via email. The preference for email submissions is Portable Document Format (PDF) attachments. A detailed agenda will be posted on the FAA website at *https://www.faa.gov/space/additional_information/comstac/.*

Issued in Washington, DC.

Brian A. Verna,

Designated Federal Officer, Commercial Space Transportation Advisory Committee, Federal Aviation Administration, Department of Transportation.

[FR Doc. 2024–07533 Filed 4–9–24; 8:45 am]

BILLING CODE;P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2024–0019]

Renewal Package From the State of Arizona to the Surface Transportation Project Delivery Program and Proposed Memorandum of Understanding (MOU) Assigning Federal Highway Administration's Environmental Review Responsibilities to the State

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of proposed MOU, request for comments.

SUMMARY: This notice announces that FHWA has received and reviewed a renewal package from the Arizona Department of Transportation (ADOT) requesting renewed participation in the Surface Transportation Project Delivery Program (Program). This Program allows FHWA to assign, and States to assume, responsibilities under the National Environmental Policy Act (NEPA), and all or part of FHWA's responsibilities for environmental review, consultation, or other actions required under any Federal environmental law with respect to one or more Federal highway projects within the State. The FHWA determined the renewal package to be complete and developed a draft renewal MOU with ADOT outlining how the State will implement the Program with FHWA oversight. The public is invited to comment on ADOT's renewal package, which includes the draft renewal MOU that describes the proposed assignments and assumptions of environmental review, consultation, and other activities.

DATES: Please submit comments by May 10, 2024.

ADDRESSES: You may submit comments, identified by DOT Document Management System (DMS) Docket Number FHWA–2024–0019, by any of the methods described below. To ensure that you do not duplicate your submissions, please submit them by only one of the means below. Electronic comments are preferred because Federal offices experience intermittent mail delays from security screening.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* and follow the online instructions for submitting comments.
- *Facsimile (Fax):* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590 between 9:00 a.m. and 5:00 p.m. e.t., Monday through Friday, except Federal holidays.

Instructions: You must include the agency name and docket number at the beginning of your comments. All comments received will be posted without change to *www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT:

For FHWA: Ms. Rebecca Yedlin, Environmental Program Manager, Federal Highway Administration, 4000 North Central Avenue, Suite 1500, Phoenix, AZ 85012; by email at *rebecca.yedlin@dot.gov* or by telephone

at 602–382–8979. The FHWA Arizona Division office's normal business hours are 8:00 a.m. to 4:30 p.m. (Arizona Time), Monday–Friday, except for Federal Holidays.

For the State of Arizona: Mr. Steve Olmsted, NEPA Assignment Manager, Arizona Department of Transportation, 205 S 17th Avenue, Mail Drop EM02, Phoenix, AZ 85007; by email at *solmsted@azdot.gov* or by telephone at 602–712–6421. The Arizona Department of Transportation's normal business hours are 8:00 a.m. to 4:30 p.m. (Arizona Time), Monday–Friday, except for State and Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may reach the Office of the Federal Register's home page at: *www.FederalRegister.gov* and the U.S. Government Publishing Office's database at: *www.GovInfo.gov.* An electronic version of the proposed renewal MOU may be downloaded by accessing the DOT DMS docket, as described above, at *www.regulations.gov.*

Background

Section 327 of Title 23, United States Code (U.S.C.), allows the Secretary of the DOT to assign, and a State to assume, the responsibilities under the NEPA (42 U.S.C. 4321 *et seq.*) and all or part of the responsibilities for environmental review, consultation, or other actions required under certain Federal environmental laws with respect to one or more Federal-aid highway projects within the State. The FHWA is authorized to act on behalf of the Secretary with respect to these matters.

The ADOT entered the Program on April 16, 2019, after submitting its application to FHWA, obtaining FHWA's approval, and entering into a MOU in accordance with 23 U.S.C. 327 and FHWA's application regulations for the Program (23 CFR part 773).

On June 29, 2018, prior to submittal of its application to FHWA, ADOT published in the **Federal Register** and solicited public comment on its draft application to participate in the Program. After considering and addressing public comments, ADOT submitted its application to FHWA on November 16, 2018. The application served as the basis for developing the MOU identifying the responsibilities and obligations ADOT would assume. The FHWA published a notice of the draft MOU in the **Federal Register** on February 11, 2019, soliciting the views of the public and Federal Agencies on FHWA's preliminary decision to approve the application. Following the comment period, FHWA and ADOT considered comments and proceeded to execute the MOU (2019 MOU). Effective April 16, 2019, ADOT assumed FHWA's responsibilities under NEPA, and the responsibilities for reviews under other Federal environmental requirements.

On October 19, 2023, after coordination with FHWA, ADOT submitted a renewal package in accordance with the renewal regulations in 23 CFR 773.115. The ADOT's completed renewal package was submitted on March 5, 2024. In order to complete the public involvement process and finalize the renewal MOU, FHWA has indicated ADOT may retain temporarily its assigned and assumed responsibilities under a MOU after the expiration of the MOU in accordance with 23 CFR 773.115(h).

Under the proposed renewal MOU, FHWA would assign to the State, through ADOT, and ADOT assumes, subject to the terms and conditions set forth in 23 U.S.C. 327 and this MOU, all the DOT Secretary's responsibilities for compliance with the NEPA of 1969, 42 U.S.C. 4321, *et seq.,* with respect to the highway projects specified under subpart 3.3. This includes statutory provisions, regulations, policies, and guidance related to the implementation of NEPA for Federal-aid highway projects, 23 U.S.C. 139, 40 CFR parts 1500–1508, DOT Order 5610.1C, and 23 CFR part 771, as applicable. Excluded from assignment are:

- Any Federal Lands Highway projects authorized under 23 U.S.C. 202, 203, 204, and Section 1123 of the Fixing America's Surface Transportation Act, unless such projects will be designed and constructed by ADOT.
- Any project that crosses or is adjacent to international boundaries.
- Any highway project that crosses State boundaries.
- South Mountain Freeway Environmental Impact Statement until the notices of limitation of claims issued by FHWA pursuant to 23 U.S.C. 139(l) have expired. The ADOT agrees to be responsible for any re-evaluations needed under 23 CFR 771.129 or other environmental reviews needed for the South Mountain Freeway Project thereafter.
- Interstate 11 (I–11) Corridor Tier 1 EIS, Nogales to Wickenburg until resolution of the complaint filed against FHWA (Coalition for Sonoran Desert Protection et al v. Federal Highway Administration et al., Case No. 4:22–cv–00193–JCH), any re-evaluations or other actions not ordered by the court, and any subsequent appeals.
- I–11, I–10 to US 93 Tier 2 EIS in Maricopa County until the notice of limitation of claims issued by FHWA pursuant to 23 U.S.C. 139(l) for the Record of Decision has expired.
- Projects advanced by direct recipients of Federal assistance other than ADOT, including but not limited to competitive grant programs and Transportation Infrastructure Finance and Innovation Act (TIFIA) Credit Program.

The assignment does not alter the scope and terms of Section 326 MOU signed on January 3, 2018, renewed on January 4, 2021, and subsequently on December 20, 2023, between ADOT and FHWA. As applicable, ADOT will conduct all environmental reviews authorized under the terms of that MOU.

The assignment also would give ADOT the responsibility to conduct the following environmental review, consultation, and other related activities:

Air Quality

- Clean Air Act, 42 U.S.C. 7401–7671q, with the exception of project level conformity determinations

Executive Orders (E.O.) Relating to Highway Projects

- E.O. 11593, Protection and Enhancement of the Cultural Environment
- E.O. 11988, Floodplain Management (except approving design standards determinations that a significant encroachment is the only practicable alternative under 23 CFR parts 650.113 and 650.115)
- E.O. 11990, Protection of Wetlands
- E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
- E.O. 13007, Indian Sacred Sites
- E.O. 13112, Invasive Species, as amended by E.O. 13751, Safeguarding the Nation from the Impacts of Invasive Species
- E.O. 13175, Consultation and Coordination with Indian Tribal Governments
- E.O. 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government
- E.O. 13990, Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis
- E.O. 14008, Tackling the Climate Crisis at Home and Abroad
- Other Executive Orders not listed, but related to highway projects

FHWA-Specific

- Efficient Project Reviews for Environmental Decisionmaking, 23 U.S.C. 139
- Environmental Impact and Related Procedures, 23 CFR part 771
- Planning and Environmental Linkages, 23 U.S.C. 168, with the exception of those FHWA responsibilities associated with 23 U.S.C. 134 and 135
- Programmatic Mitigation Plans, 23 U.S.C. 169, with the exception of those FHWA responsibilities associated with 23 U.S.C. 134 and 135

Hazardous Materials Management
- Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601–9675
- Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901–6992k
- Superfund Amendments and Reauthorization Act (SARA), 42 U.S.C. 9671–9675

Historic and Cultural Resources
- Archeological Resources Protection Act of 1979, 16 U.S.C. 470(aa)–(mm)
- Native American Grave Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3001–3013; 18 U.S.C.1170
- Preservation of Historical and Archeological Data, 54 U.S.C. 312501–312508
- Section 106 of the National Historic Preservation Act of 1966, as amended, 54 U.S.C. 306108

Noise
- Noise regulations in 23 CFR part 772
- Noise Control Act of 1972, 42 U.S.C. 4901–4918

Parklands and Other Special Land Uses
- Land and Water Conservation Fund (LWCF) Act, 54 U.S.C. 200302–200310
- Section 4(f) of the Department of Transportation Act of 1966, 23 U.S.C. 138, 49 U.S.C. 303 and implementing regulations at 23 CFR part 774

Social and Economic Impacts
- American Indian Religious Freedom Act, 42 U.S.C. 1996
- Farmland Protection Policy Act (FPPA), 7 U.S.C. 4201–4209

Water Resources and Wetlands
- Clean Water Act, 33 U.S.C. 1251–1387
- Section 319, 33 U.S.C. 1329
- Section 401, 33 U.S.C. 1341
- Section 402, 33 U.S.C. 1342
- Section 404, 33 U.S.C. 1344
- Emergency Wetlands Resources Act, 16 U.S.C. 3901 and 3921
- Flood Disaster Protection Act, 42 U.S.C. 4001–4130
- Mitigation of Impacts to Wetlands and Natural Habitat, 23 CFR part 777
- Rivers and Harbors Appropriation Act of 1899, 33 U.S.C. 401, 403, and 408
- Safe Drinking Water Act (SDWA), 42 U.S.C. 300f–300j–26
- Wetlands Mitigation, 23 U.S.C. 119(g)
- Wild and Scenic Rivers Act, 16 U.S.C. 1271–1287

Wildlife
- Anadromous Fish Conservation Act, 16 U.S.C. 757a–757f
- Bald and Golden Eagle Protection Act, as amended, 16 U.S.C. 668–668c
- Fish and Wildlife Coordination Act, 16 U.S.C. 661–667d
- Magnuson-Stevens Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. 1801–1891d
- Marine Mammal Protection Act, 16 U.S.C. 1361–1423h
- Migratory Bird Treaty Act, 16 U.S.C. 703–712
- Section 7 of the Endangered Species Act of 1973, 16 U.S.C. 1536.

The proposed renewal MOU would allow ADOT to continue to act in the place of FHWA in carrying out the environmental review-related functions described above, except with respect to government-to-government consultations with federally recognized Indian Tribes. The FHWA will retain responsibility for conducting formal government-to-government consultation with federally recognized Indian Tribes, which is required under some of the listed laws and E.O.s. The ADOT will continue to handle routine consultations with the Tribes and understands that a Tribe has the right to direct consultation with FHWA upon request. The ADOT also may assist FHWA with formal consultations, with consent of a Tribe, but FHWA remains responsible for the consultation. The ADOT also will not assume FHWA's responsibilities for conformity determinations required under section 176 of the Clean Air Act (42 U.S.C. 7506) or any responsibility under 23 U.S.C. 134 or 135, or under 49 U.S.C. 5303 or 5304.

The MOU content reflects ADOT's desire to continue its participation in the Program. The FHWA and ADOT have agreed to modify some of the provisions in the MOU to, among other things: clarify the categories of projects excluded from assignment; designate a Senior Agency Official at ADOT consistent with 40 CFR 1508.1(dd); remove auditing requirements; revise monitoring requirements; update record retention requirements; provide for enhanced reporting to FHWA on issues including environmental justice analysis and associated mitigation, where applicable; revise provisions related to data and information requests; and revise provisions related to FHWA-initiated withdrawal of assigned projects.

A copy of the proposed renewal MOU and renewal package may be viewed on the DOT DMS Docket, as described above, or may be obtained by contacting FHWA or the State at the addresses provided above. A copy also may be viewed on ADOT's website at *https://azdot.gov/business/envirnonmental-planning-ce-assignment-and-nepa-assignment.* The FHWA Arizona Division, in consultation with FHWA Headquarters, will consider the comments submitted when making its decision on the proposed MOU revision. Any final renewal MOU approved by FHWA may include changes based on comments and consultations relating to the proposed renewal MOU and will be made publicly available.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing E.O. 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 327; 42 U.S.C. 4331, 4332; 23 CFR 771.101–139; 23 CFR 773.115; 40 CFR 1507.3; and 49 CFR 1.85.

Shailen P. Bhatt,

Administrator, Federal Highway Administration.

[FR Doc. 2024–07568 Filed 4–9–24; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2024–0003]

Qualification of Drivers; Exemption Applications; Implantable Cardioverter Defibrillator (ICD)

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

ACTION: Notice of denials.

SUMMARY: FMCSA announces its decision to deny the applications from two individuals treated with an Implantable Cardioverter Defibrillator (ICD) who requested an exemption from the Federal Motor Carrier Safety

Regulations (FMCSRs) prohibiting operation of a commercial motor vehicle (CMV) in interstate commerce by persons with a current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis, or any other cardiovascular disease of a variety known to be accompanied by syncope (transient loss of consciousness), dyspnea (shortness of breath), collapse, or congestive heart failure.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001, (202) 366–4001, *fmcsamedical@dot.gov.* Office hours are from 8:30 a.m. to 5 p.m. ET Monday through Friday, except Federal holidays. If you have questions regarding viewing materials in the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Comments

To view comments go to *www.regulations.gov.* Insert the docket number (FMCSA–2024–0003) in the keyword box and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

B. Privacy Act

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption requests. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov.* As described in the system of records notice DOT/ALL 14 (Federal Docket Management System), which can be reviewed at *https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices,* the comments are searchable by the name of the submitter.

II. Background

On February 28, 2024, FMCSA published a notice announcing receipt of applications from two individuals treated with ICDs and requested comments from the public (89 FR 14734). The individuals requested an exemption from 49 CFR 391.41(b)(4) which prohibits operation of a CMV in interstate commerce by persons with a current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis, or any other cardiovascular disease of a variety known to be accompanied by syncope, dyspnea, collapse, or congestive heart failure. The public comment period ended on March 29, 2024, and no comments were received.

FMCSA has evaluated the eligibility of the applicants and concluded that granting an exemption would not provide a level of safety that would be equivalent to, or greater than, the level of safety that would be obtained by complying with § 391.41(b)(4). A summary of each applicant's medical history related to their ICD exemption request was discussed in the **Federal Register** notice (89 FR 14734) and will not be repeated here.

The Agency's decision regarding this exemption application is based on information from the Cardiovascular Medical Advisory Criteria, an April 2007 evidence report titled ''Cardiovascular Disease and Commercial Motor Vehicle Driver Safety,'' [1] and a December 2014 focused research report titled ''Implantable Cardioverter Defibrillators and the Impact of a Shock in a Patient When Deployed.'' Copies of these reports are included in the docket.

FMCSA has published advisory criteria to assist medical examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce.[2] The advisory criteria for § 391.41(b)(4) indicates that coronary artery bypass surgery and pacemaker implantation are remedial procedures and thus, not medically disqualifying. ICDs are disqualifying due to risk of syncope.

III. Discussion of Comments

FMCSA received no comments in this proceeding.

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.

The Agency's decision regarding these exemption applications is based on an individualized assessment of the applicants' medical information, available medical and scientific data concerning ICDs, and any relevant public comments received.

In the case of persons with ICDs, the underlying condition for which the ICD was implanted places the individual at high risk for syncope or other unpredictable events known to result in gradual or sudden incapacitation. ICDs may discharge, which could result in loss of ability to safely control a CMV. The December 2014 focused research report referenced previously upholds the findings of the April 2007 report and indicates that the available scientific data on persons with ICDs and CMV driving does not support that persons with ICDs who operate CMVs are able to meet an equal or greater level of safety.

V. Conclusion

The Agency has determined that the available medical and scientific literature and research provides insufficient data to enable the Agency to conclude that granting these exemptions would achieve a level of safety equivalent to, or greater than, the level of safety maintained without the exemption. Therefore, the following applicants have been denied an exemption from the physical qualification standards in § 391.41(b)(4):

Brenda Smith (MS); and Ofer Zacks (CA).

The applicants have, prior to this notice, received a letter of final disposition regarding their exemption request. The decision letter fully outlined the basis for the denial and constitute final action by the Agency. The names of these individuals published today summarizes the Agency's recent denials as required under 49 U.S.C. 31315(b)(4).

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2024–07585 Filed 4–9–24; 8:45 am]

BILLING CODE 4910–EX–P

[1] The report is available on the internet at *https://rosap.ntl.bts.gov/view/dot/16462.*

[2] These criteria may be found in 49 CFR part 391, Appendix A to Part 391—Medical Advisory Criteria, section D. *Cardiovascular: § 391.41(b)(4),* paragraph 4, which is available on the internet at *https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf.*

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2010–0043]

Northern Indiana Commuter Transportation District's Request To Amend Its Positive Train Control Safety Plan and Positive Train Control System

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of availability and request for comments.

SUMMARY: This document provides the public with notice that, on March 29, 2024, the Northern Indiana Commuter Transportation District (NICD) submitted a request for amendment (RFA) to its FRA-approved Positive Train Control Safety Plan (PTCSP). As this RFA involves a request for FRA's approval of a proposed material modification to an FRA-certified positive train control (PTC) system related to the design and implementation of a new Back Office Server, FRA is publishing this notice and inviting public comment on the railroad's RFA to its PTCSP.

DATES: FRA will consider comments received by April 30, 2024. FRA may consider comments received after that date to the extent practicable and without delaying implementation of valuable or necessary modifications to a PTC system.

ADDRESSES: *Comments:* Comments may be submitted by going to *https://www.regulations.gov* and following the online instructions for submitting comments.

Instructions: All submissions must include the agency name and the applicable docket number. The relevant PTC docket number for this host railroad is Docket No. FRA–2010–0043. For convenience, all active PTC dockets are hyperlinked on FRA's website at *https://railroads.dot.gov/research-development/program-areas/train-control/ptc/railroads-ptc-dockets.* All comments received will be posted without change to *https://www.regulations.gov;* this includes any personal information.

FOR FURTHER INFORMATION CONTACT: Gabe Neal, Staff Director, Signal, Train Control, and Crossings Division, telephone: 816–516–7168, email: *Gabe.Neal@dot.gov.*

SUPPLEMENTARY INFORMATION: In general, title 49 United States Code (U.S.C.) section 20157(h) requires FRA to certify that a host railroad's PTC system complies with title 49 Code of Federal Regulations (CFR) part 236, subpart I, before the technology may be operated in revenue service. Before making certain changes to an FRA-certified PTC system or the associated FRA-approved PTCSP, a host railroad must submit, and obtain FRA's approval of, an RFA to its PTCSP under 49 CFR 236.1021.

Under 49 CFR 236.1021(e), FRA's regulations provide that FRA will publish a notice in the **Federal Register** and invite public comment in accordance with 49 CFR part 211, if an RFA includes a request for approval of a material modification of a signal or train control system. Accordingly, this notice informs the public that, on March 29, 2024, NICD submitted an RFA to its PTCSP for its Interoperable Electronic Train Management System (I–ETMS), which seeks FRA's approval for the design and implementation of a new Back Office Server. That RFA is available in Docket No. FRA–2010–0043.

Interested parties are invited to comment on NICD's RFA to its PTCSP by submitting written comments or data. During FRA's review of this railroad's RFA, FRA will consider any comments or data submitted within the timeline specified in this notice and to the extent practicable, without delaying implementation of valuable or necessary modifications to a PTC system. *See* 49 CFR 236.1021; *see also* 49 CFR 236.1011(e). Under 49 CFR 236.1021, FRA maintains the authority to approve, approve with conditions, or deny a railroad's RFA to its PTCSP at FRA's sole discretion.

Privacy Act Notice

In accordance with 49 CFR 211.3, FRA solicits comments from the public to better inform its decisions. DOT posts these comments, without edit, including any personal information the commenter provides, to *https://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See *https://www.regulations.gov/privacy-notice* for the privacy notice of regulations.gov. To facilitate comment tracking, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. If you wish to provide comments containing proprietary or confidential information, please contact FRA for alternate submission instructions.

Issued in Washington, DC.

Carolyn R. Hayward-Williams,

Director, Office of Railroad Systems and Technology.

[FR Doc. 2024–07610 Filed 4–9–24; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2024–0039]

Renewal Package From the State of California to the Surface Transportation Project Delivery Program and Proposed Memorandum of Understanding (MOU) Assigning Environmental Responsibilities to the State

AGENCY: Federal Railroad Administration (FRA), U.S. Department of Transportation (DOT).

ACTION: Notice, request for comments.

SUMMARY: This notice announces that FRA has received and reviewed a renewal package from the State of California (State) acting through the California State Transportation Agency (CalSTA) and California High-Speed Rail Authority (Authority) requesting renewed participation in the Surface Transportation Project Delivery Program (Program). Under the Program, FRA may assign, and the State may assume, responsibilities under the National Environmental Policy Act (NEPA), and all or part of FRA's responsibilities for environmental review, consultation, or other actions required under any Federal environmental laws with respect to one or more railroad projects within the State. FRA has determined the renewal package to be complete, and developed a draft renewal MOU with CalSTA and the Authority outlining how the State will implement the Program with FRA oversight. The public is invited to comment on the State's request, including its renewal package and the proposed renewal MOU, which includes the proposed assignments and assumptions of environmental review, consultation, and other activities.

DATES: Comments must be received on or before May 10, 2024.

ADDRESSES: Comments related to Docket No. FRA–2024–0039 may be submitted by going to *https://www.regulations.gov* and following the online instructions for submitting comments.

Instructions: All submissions must refer to the Federal Railroad Administration and the docket number in this notice (FRA–2024–0039). Note that all submissions received, including any personal information provided, will

be posted without change and will be available to the public on *https://www.regulations.gov.* You may review DOT's complete Privacy Act Statement in the **Federal Register** published April 11, 2000 (65 FR 19477), or at *https://www.transportation.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: For questions about this notice, *for FRA,* please contact Ms. Lana Lau, Supervisory Environmental Protection Specialist, Office of Environmental Program Management, Federal Railroad Administration, telephone (202) 923–5314, email: *Lana.Lau@dot.gov.* For the Authority, please contact Mr. Scott Rothenberg, NEPA Assignment Manager, Environmental Services, California High-Speed Rail Authority, telephone: (916) 403–6936; email: *Scott.Rothenberg@hsr.ca.gov.*

SUPPLEMENTARY INFORMATION:

Background: Section 327 of Title 23, United States Code (23 U.S.C. 327) establishes the Surface Transportation Project Delivery Program (Program). It allows the Secretary of the U.S. Department of Transportation (Secretary) to assign, and a State to assume, responsibility for all or part of the Secretary's responsibilities for environmental review, consultation, or other actions required under NEPA (42 U.S.C. 4321 *et seq.*) and any Federal environmental law with respect to one or more highway projects within the State, as well as one or more railroad, public transportation, and/or multimodal projects.[1] FRA is authorized to act on behalf of the Secretary with respect to these matters for railroad projects.

The State of California initially participated in the Federal Highway Administration's (FHWA) Surface Transportation Project Delivery Pilot Program (a predecessor to the Program) from July 1, 2007, through September 30, 2012. In 2012, the Moving Ahead for Progress in the 21st Century Act (MAP–21) amended 23 U.S.C. 327 to establish the permanent Program. As a result, on October 1, 2012, the State, acting through Caltrans, entered into a MOU with FHWA that bridged the pilot Program with the Program. Previously, MOUs under the Program included a term of 5 years. However, in 2021, the Infrastructure Investment and Jobs Act amended 23 U.S.C. 327 to require MOUs to have a term of 10 years if the state has participated in the Program (or predecessor program) for at least 10 years. The State has participated in the Program for 15 years, including the State's participation in the pilot program.

On July 23, 2019, the State of California, acting through CalSTA and the Authority, assumed FRA's responsibilities for one or more railroad projects in the state, after submitting its application to FRA, obtaining FRA's approval, and entering into an MOU in accordance with 23 U.S.C. 327 and the application regulations for the Program (23 CFR part 773). On May 22, 2023, the Secretary of CalSTA notified FRA of its intention to renew its participation in the Program. On July 21, 2023, the Authority submitted a Summary of Key Changes, which summarized the State's proposed changes to its NEPA Assignment program and requested FRA's determination on whether the proposed changes constituted changes warranting statewide notice for public comment prior to the formal submittal of the renewal application. On January 4, 2024, FRA concluded that no significant changes were proposed, or new assignment responsibilities sought, that would warrant statewide notice for public comment before the Authority formally submits a renewal application to FRA. On January 25, 2024, the State submitted the renewal package in accordance with 23 CFR 773.115. Since the State's submittal, FRA and the State have made minor changes to Section 3.3.1 of the MOU to clarify the types of projects that would be suitable for assignment, and these changes are included in the proposed renewal MOU.

Under the proposed renewal MOU, FRA would assign to the State, acting through CalSTA and the Authority, the responsibility for making decisions on railroad projects as described in the State's application and in Section 3.3 of the draft renewal MOU. Excluded from assignment are the following:

(1) Railroad projects that cross state boundaries or that cross or are adjacent to international boundaries. For purposes of the State's application and the proposed renewal MOU, a project is considered ''adjacent to international boundaries'' if it requires the issuance of a new, or modification of an existing, Presidential Permit.

(2) As provided at 23 U.S.C. 327(a)(2)(D), any railroad project that is not assumed by the State as identified in the State's application and the proposed renewal MOU, remains the responsibility of FRA.

Under the proposed renewal MOU, State, acting through CalSTA and CHSRA, would also assume the responsibility to conduct the following environmental review, consultation, and other related activities for project delivery:

Environmental Review Process

Efficient environmental reviews for project decision-making, 23 U.S.C. 139 Efficient environmental reviews, 49 U.S.C. 24201

Air Quality

Clean Air Act (CAA), 42 U.S.C. 7401–7671q, with the exception of any project-level general conformity determinations

Noise

Noise Control Act of 1972, 42 U.S.C. 4901–4918

Wildlife

Endangered Species Act of 1973 (ESA), 16 U.S.C. 1531–1544
Marine Mammal Protection Act, 16 U.S.C. 1361–1423h
Anadromous Fish Conservation Act, 16 U.S.C. 757a–757f
Fish and Wildlife Coordination Act, 16 U.S.C. 661–667d
Bald and Golden Eagle Protection Act, 16 U.S.C. 668–668d
Migratory Bird Treaty Act, 16 U.S.C. 703–712
Magnuson-Stevens Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. 1801–1891d

Hazardous Materials Management

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601–9675
Superfund Amendments and Reauthorization Act (SARA), 42 U.S.C. 9671–9675
Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901–6992k

Historic and Cultural Resources

National Historic Preservation Act of 1966, as amended, 54 U.S.C. 300101–307108, *et seq.*
Archeological and Historic Preservation Act of 1966, as amended, 16 U.S.C. 469–469c
Archeological Resources Protection Act, 16 U.S.C. 470aa–470mm, Title 54, Chapter 3125—Preservation of Historical and Archeological Data, 54 U.S.C. 312501–312508
Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3001–3013; 18 U.S.C. 1170

Social and Economic Impacts

American Indian Religious Freedom Act, 42 U.S.C. 1996
Farmland Protection Policy Act (FPPA), 7 U.S.C. 4201–4209

[1] The Secretary may not assign its responsibility for making any conformity determination required under section 176 of the Clean Air Act. Also not assignable is Government to Government consultation with federally recognized Indian Tribes.

Water Resources and Wetlands

Clean Water Act, 33 U.S.C. 1251–1387 (Sections 401, 402, 404, 408, and Section 319)
Safe Drinking Water Act (SDWA), 42 U.S.C. 300f–300j–26
Rivers and Harbors Act of 1899, 33 U.S.C. 401 and 403
Wild and Scenic Rivers Act, 16 U.S.C. 1271–1287
Emergency Wetlands Resources Act, 16 U.S.C. 3901 and 3921
Flood Disaster Protection Act, 42 U.S.C. 4001–4133
General Bridge Act of 1946, 33 U.S.C. 525–533
Coastal Barrier Resources Act, 16 U.S.C. 3501–3510
Coastal Zone Management Act, 16 U.S.C. 1451–1466
Wetlands Mitigation, 23 U.S.C. 119(g)

Parklands and Other Special Land Uses

49 U.S.C. 303 (Section 4(f))
Land and Water Conservation Fund (LWCF) Act, 54 U.S.C. 200302–200310

Executive Orders

E.O. 11990, Protection of Wetlands
E.O. 11988, Floodplain Management
E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
E.O. 13112, Invasive Species, as amended by E.O. 13751, Safeguarding the Nation from the Impacts of Invasive Species
E.O. 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government
E.O. 13990, Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis
E.O. 14008, Tackling the Climate Change Crisis at Home and Abroad
E.O. 14096, Revitalizing Our Nation's Commitment to Environmental Justice for All

The proposed renewal MOU would allow the State, acting through CalSTA and the Authority, to continue to act in the place of FRA in carrying out the environmental review-related functions described above, except with respect to Government-to-Government consultations with federally recognized Indian Tribes. The State, acting through CalSTA and the Authority, would continue to handle routine consultations with the Tribes and understands that a Tribe has the right to direct consultation with FRA upon request. The State, acting through CalSTA and the Authority, may assist FRA with Government-to-Government consultations, with consent of a Tribe, but FRA remains responsible for the consultation.

In addition, the State, acting through CalSTA and the Authority, would not assume FRA's responsibilities for conformity determinations required under Section 176 of the CAA (42 U.S.C. 7506), or any responsibility under 23 U.S.C. 134 or 135, or under 49 U.S.C. 5303 or 5304.

The MOU content reflects the State's, acting through CalSTA and the Authority, desire to continue its participation in the Program. FRA and the State, acting through CalSTA and the Authority, have agreed to modify some of the provisions in the MOU to, among other things: include an updated list of environmental laws, presidential executive orders and related guidance, including added references to Title VI of the Civil Rights Act of 1964 and environmental justice; provide updated Program information, organization charts, and staffing structure; and provide updated policies and processes, including updates to monitoring and oversight and quality assurance and quality control (QA/QC).

The Bipartisan Infrastructure Law (Infrastructure Investment and Jobs Act, Pub. L. 117–58), enacted on November 15, 2021, amended 23 U.S.C. 327(c)(5) to require that MOUs have a term of 10 years if a State that has participated in the Program (or predecessor program) for at least 10 years. The State has participated in the Program for 15 years, inclusive of the State's participation in the Program and the pilot program with FHWA. Therefore, this proposed renewal MOU will have a term of 10 years.

FRA will consider the comments submitted on the State's application and the proposed renewal MOU. A copy of the renewal package and proposed renewal MOU may be viewed on the docket (FRA–2024–0039) at *www.regulations.gov.* A copy also may be viewed on the Authority's website at: *https://hsr.ca.gov/programs/.* Any final renewal MOU approved by FRA may include changes based on comments and consultations relating to the proposed renewal MOU and will be made publicly available.

Authority: 23 U.S.C. 327; 42 U.S.C. 4331, 4332; 23 CFR part 773; 40 CFR 1507.3; and 49 CFR 264.101.

Marlys Ann Osterhues,

Director, Office of Environmental Program Management, Office of Railroad Administration, Federal Railroad Administration.

[FR Doc. 2024–07615 Filed 4–9–24; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2023–0010]

National Public Transportation Safety Plan

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Notice of availability and response to comments.

SUMMARY: The Federal Transit Administration (FTA) has placed into the docket and on its website the final National Public Transportation Safety Plan (National Safety Plan) that is intended to guide the national effort to manage safety risk in our nation's public transportation systems. The updated National Safety Plan establishes performance measures for Public Transportation Agency Safety Plans (PTASP), including measures for safety risk reduction programs, to improve the safety of public transportation systems that receive FTA Federal financial assistance. Transit agencies will set performance targets based on the measures in order to monitor and assess the safety performance of their public transportation systems.

DATES: The applicable date of the National Safety Plan is April 10, 2024.

FOR FURTHER INFORMATION CONTACT: For program matters, contact Arnebya Belton, Office of Transit Safety and Oversight, 202–366–7546 or *arnebya.belton@dot.gov.* For legal matters, contact Emily Jessup, Office of Chief Counsel, (202) 366–8907 or *emily.jessup@dot.gov.*

SUPPLEMENTARY INFORMATION:

Availability of Final Plan

This notice provides responses to comments received on the proposed updates to the National Safety Plan and discusses the changes made to the National Safety Plan in response. The National Safety Plan itself is not included in this notice; instead, an electronic version is available on FTA's website, at: *https://www.transit.dot.gov/regulations-and-guidance/safety/national-public-transportation-safety-plan,* and in the docket, at *https://www.regulations.gov/docket/FTA-2023-0010.*

Table of Contents

I. Background

Congress first directed FTA to create and implement a National Public Transportation Safety Plan (National Safety Plan) under the Moving Ahead for Progress in the 21st Century (MAP–21) Act (Pub. L. 112–141), which authorized a new Public Transportation Safety Program (Safety Program) at 49 U.S.C. 5329. The Safety Program was reauthorized by the Fixing America's Surface Transportation (FAST) Act (Pub. L. 114–94) and again by the Bipartisan Infrastructure Law, enacted as the Infrastructure Investment and Jobs Act (Pub. L. 117–58).

On February 5, 2016, FTA first published a **Federal Register** notice (81 FR 6372) seeking comment on a proposed National Safety Plan. Subsequently, on January 18, 2017, FTA published a summary of the final changes to the National Safety Plan and responses to comments in the **Federal Register** (82 FR 5628) and published the finalized plan to the docket and on FTA's website.

On May 31, 2023, FTA published a notice of availability of proposed updates to the National Safety Plan and a request for comments (88 FR 34917). Pursuant to 49 U.S.C. 5329(b), the National Safety Plan includes several elements intended to improve the safety of all public transportation systems that receive Federal financial assistance under 49 U.S.C. Chapter 53. The Bipartisan Infrastructure Law identified new elements that must be included in the National Safety Plan, including:

- Safety performance measures related to the PTASP safety risk reduction program;
- In consultation with the Secretary of Health and Human Services, precautionary and reactive actions required to ensure public and personnel safety and health during an emergency; and
- Consideration, where appropriate, of performance-based and risk-based methodologies.

The Bipartisan Infrastructure Law also requires that the minimum safety performance standards for public transportation vehicles used in revenue operations take into consideration, to the extent practicable, innovations in driver assistance technologies and driver protection infrastructure, where appropriate, and a reduction in visibility impairments that contribute to pedestrian fatalities.

This update continues to strengthen FTA's safety program and addresses new requirements in the Bipartisan Infrastructure Law to further advance transit safety.

II. Summary of Public Comment and FTA's Response

The public comment period for the proposed update to the National Safety Plan closed on July 31, 2023. FTA received 34 comment submissions. Excluding two duplicate submissions, received submissions from 32 unique commenters, including States, transit agencies, trade associations, and individuals. FTA reviewed all the comments and thoughtfully considered them when finalizing the National Safety Plan.

FTA received several comments that raised issues outside of the scope of the proposed National Safety Plan. Because they are outside the scope of the proposal, FTA will not respond to those comments in this notice.

Specifically, FTA received comments on National Transit Database (NTD) reporting requirements and FTA's proposals in the Public Transportation Agency Safety Plans (PTASP) notice of proposed rulemaking (NPRM) published in the **Federal Register** on April 26, 2023 (88 FR 25336). FTA appreciates the interest in these areas but is not addressing these comments in this notice. Rather, FTA directs interested readers to the NTD web page on FTA's website for NTD-related information and has addressed comments related to the PTASP NPRM through the PTASP final rule, which is a separate regulatory action.

While FTA received comments on various aspects of the National Safety Plan, FTA is largely finalizing the National Safety Plan as proposed. In response to comments received, FTA has revised Chapter III of the final National Safety Plan. These revisions are discussed below in the summary of public comments and FTA's responses. Comments and responses are subdivided by their corresponding sections of the National Safety Plan and subject matter.

A. General

1. Applicability

Comments: Two commenters expressed that the National Safety Plan and safety performance measurement requirements should be consistent with the applicability of the existing PTASP regulation, which excludes recipients that only receive funding under 49 U.S.C. 5310, 49 U.S.C. 5311, or both (See: 49 CFR 673.1). One of the commenters argued that rural and small public transportation providers have limited resources and an excellent safety record, and that FTA should limit the burden of safety regulations on such providers.

One commenter expressed concern that paratransit service appeared to be excluded from the National Safety Plan, including with respect to safety performance measures and the voluntary standards and recommended practices.

Response: FTA appreciates the comments regarding the applicability of the National Safety Plan to small and rural providers and the regulatory burden on such providers. The National Safety Plan is intended to be a useful tool for all public transportation systems that receive funding under 49 U.S.C. Chapter 53, including small and rural providers. FTA notes that only agencies subject to the PTASP regulation are required to set targets using the safety performance measures in the National Safety Plan. As noted above, the PTASP regulation excludes transit agencies that receive funding only under 49 U.S.C. 5310, 49 U.S.C. 5311, or both. While some voluntary standards and resources presented in Chapter III of the National Safety Plan pertain to specific modes such as rail transit, transit agencies of all types and sizes can refer to the standards and resources presented in the National Safety Plan.

The National Safety Plan applies to paratransit service. The safety performance measures identified in Chapter II apply to paratransit service subject to the PTASP regulation, and Chapter III includes resources that pertain to paratransit service.

2. Effective Date

Comments: One commenter asked for clarification on when the National Safety Plan will go into effect, and whether it will be applicable before or after the effective date of FTA's PTASP final rule. Another commenter urged FTA to clarify that the safety performance measures must be implemented on the applicable date of the National Safety Plan. In addition, a commenter asked FTA not to delay implementation of the NTD reporting requirements that transit agencies and Safety Committees rely on to set performance targets for the new safety performance measures.

Response: The National Safety Plan is applicable upon today's publication in the **Federal Register**. Per 49 U.S.C. 5329(d)(4)(A), the Safety Committee of transit agencies serving a large urbanized area must set performance targets for the safety risk reduction program using a 3-year rolling average of NTD data. In a Dear Colleague letter released on February 17, 2022, FTA communicated that these performance targets need not be in place until FTA establishes related performance

measures through the National Safety Plan (*https://www.transit.dot.gov/safety/public-transportation-agency-safety-program/dear-colleague-letter-bipartisan-infrastructure*). FTA establishes such performance measures through the National Safety Plan finalized today. Therefore, FTA expects Safety Committees to set safety performance targets for the safety risk reduction program based on the safety risk reduction program performance measures in this final National Safety Plan. Per 49 CFR 673.11(a), FTA expects that transit agencies will revise their Agency Safety Plans (ASPs) to address the new performance measures, including documenting required safety performance targets, as part of their existing annual ASP update process.

FTA recognizes that certain transit agencies may not yet have reported three years of safety event information to the NTD that corresponds to the safety risk reduction program performance measures. FTA has addressed this situation in the PTASP final rule.

FTA understands that transit agencies and their Safety Committees rely on NTD data to set PTASP performance targets, including targets for the new performance measures finalized today. In February 2023, FTA finalized NTD reporting changes regarding assaults on transit workers and fatalities that result from an impact with a bus (88 FR 11506). The new NTD requirements took effect for Full Reporters in calendar year 2023. The reporting requirements take effect for smaller reporters beginning in NTD report year 2023.

3. Safety Management Systems (SMS)

Comments: One commenter requested that FTA develop SMS-related guidance to support SMS implementation by transit managers and Safety Committees. Another commenter recommended that the updated National Safety Plan not completely supersede the 2017 version of the plan. It argued that the 2017 version includes valuable information, particularly related to SMS implementation, that is still useful to transit agencies and joint labor-management Safety Committees.

Another commenter requested that FTA add guidance to the National Safety Plan about how agencies should use the data they collect, including how to analyze safety data, use leading indicators to identify safety issues, and evaluate the effectiveness of safety efforts. It provided two examples of National Transportation Safety Board (NTSB) investigations in which agencies lacked the tools or processes to use data effectively. The commenter also urged FTA to include guidance in the National Safety Plan on Employee Safety Reporting Programs (ESRP), noting additional NTSB investigations that demonstrated this need.

One commenter requested clarification on FTA's rationale for omitting ''top-down'' from the definition of SMS in the National Safety Plan, noting that their agency understands the ''top-down'' concept to be a foundational principle of SMS.

Response: Regarding the request that FTA develop SMS-related guidance, FTA encourages transit agencies to explore the PTASP Technical Assistance Center (PTASP TAC) resource library at *https://www.transit.dot.gov/PTASP-TAC* to locate existing resources to support a transit agency's SMS implementation. These resources include information on topics raised by the commenters, such as data analysis and ESRP development. FTA will continue to develop and disseminate SMS technical assistance as needed through the PTASP TAC and other avenues.

Regarding the commenter that recommended against the proposed National Safety Plan completely superseding the previous version due to the elimination of SMS-related content, FTA notes that the SMS content in the original National Safety Plan did not fully reflect the SMS requirements in the PTASP rule, which FTA published in 2018. FTA has since clarified the SMS requirements, and agencies should reference updated materials in the PTASP TAC resource library. As noted above, FTA has developed substantial SMS-related guidance and technical assistance materials tailored specifically for transit agencies implementing an SMS and has made this information available to the public through more thorough and comprehensive technical assistance materials and SMS documentation published through the PTASP TAC resource library. FTA believes that providing guidance via the PTASP TAC rather than in the National Safety Plan allows FTA flexibility and responsiveness as questions arise related to the implementation of the Safety Program and SMS generally.

FTA appreciates the comment received regarding the need for additional guidance on effective data usage and ESRPs. However, FTA does not agree that the National Safety Plan is the best vehicle for this guidance because this document is not intended to include detailed technical assistance on specific topics, such as ESRPs. Instead, FTA will continue developing targeted guidance and technical assistance materials focused on specific SMS topics such as performance monitoring and measurement, safety performance target setting, and ESRP, and publishing such materials through the PTASP TAC resource library.

FTA appreciates the comment on the definition of SMS but declines to make changes in response. FTA notes that removing the phrase ''top-down'' is intended to reflect the multi-directional flow of information that is intrinsic to the function of an SMS. Transit worker safety reporting programs and Safety Committees are examples of multi-directional information flow throughout the agency.

B. Chapter I: Keeping Safety the Top Priority

1. Data Presentation

Comments: One commenter noted the importance of the safety performance trends presented in the National Safety Plan and recommended that FTA present a deeper dive into the associated data in the National Safety Plan, including additional granularity related to transit modes, geographical regions, population density, agency size, and other factors. This commenter noted in particular that the data on transit worker fatalities would benefit from additional context to help understand the effectiveness of existing mitigations. The commenter asked if FTA could provide additional ongoing analyses of safety performance data, including when relevant to FTA's actions to reduce safety risk and highlighted FTA's issuance of Special Directives as an example. One commenter commented that the data FTA used to prepare the charts included in Chapter I displaying safety trends in the transit industry is incomplete because the NTD did not previously collect the full picture of transit worker assaults.

Response: The data presented in Chapter I of the National Safety Plan are intended to provide a high-level snapshot of transit industry safety performance. FTA publishes more granular data monthly through the NTD, including individual event records and summary safety analyses, at *https://www.transit.dot.gov/ntd/ntd-data*. FTA will continue to explore additional methods for developing and publishing topic-specific safety performance analyses and communicating the data that contributes to FTA's actions to reduce safety risk.

Regarding transit worker assaults, FTA developed the charts in Chapter I based on historical data that was reported to the NTD. As transit agencies report to the NTD using the new definitions, FTA will update these

charts using that data in future iterations of the National Safety Plan.

2. Public Transportation Safety Concerns

Comments: One commenter expressed support for the inclusion of bus and pedestrian collisions as a safety concern and encouraged FTA to consider how bus electrification may impact pedestrian safety. Another commenter noted that the National Safety Plan does not mention suicides and urged FTA to add suicide prevention as a top safety concern in Chapter I.

Response: FTA appreciates the comments received regarding specific safety concerns facing the transit industry that were not included in the proposed National Safety Plan. In response to the suggestion regarding bus electrification, FTA has added two best practices resources developed by FTA to Chapter III of the National Safety Plan that address safety concerns related to the electrification of bus fleets: ''Safety and Security Certification of Electric Bus Fleets'' and ''Procuring and Maintaining Battery Electric Buses and Charging Systems.''

FTA agrees that suicide prevention is an important issue facing the transit industry. In December 2022, FTA issued Safety Advisory 22–4: Suicide Prevention Signage on Public Transit that recommends transit agencies apply best practices for reducing suicide attempts to suicide prevention signage and messaging campaigns. While FTA declines to add suicide prevention to Chapter I of the National Safety Plan, it has added a resource to Chapter III in response to this commenter's concerns: ''Mitigations for Trespasser and Suicide Fatalities and Injuries.''

After consideration of comments received, FTA is finalizing Chapter I of the National Safety Plan as proposed.

C. Chapter II: Safety Performance Criteria

1. Definitions

Comments: One commenter urged FTA to specify that transit agencies should use the revised NTD definition of ''assault on a transit worker'' when setting the safety performance target for assault on a transit worker. Two commenters expressed concern with the definition of ''assault on a transit worker'' and its impact on data reporting and associated data analyses. A commenter argued that it is difficult to apply certain elements of the definition consistently, such as determining when an individual acted ''knowingly'' and ''with intent.'' Another commenter noted that the definition may differ from the definition of assault under State law, which may require agencies to keep separate records for State law purposes and result in other burdens. A commenter requested that FTA work with transit agencies to clarify the term.

One commenter urged FTA to address consistency with event definitions used across FTA programs to ensure performance measurement consistency and reduce administrative burden. The commenter stated that FTA should not impose safety performance measurement requirements until it addresses definitional inconsistencies. One commenter asked what definition of ''Safety Event'' transit agencies should use for the major event performance measure. One commenter recommended that FTA allow individual transit agencies to define what events will be included in the major events performance measure, noting that safety risk differs at each agency.

Response: FTA appreciates the challenges associated with new definitions and NTD reporting requirements. FTA confirms that the term ''assault on a transit worker'' in the National Safety Plan has the same definition as in the NTD, which mirrors the statutory definition in 49 U.S.C. 5302. Although the definition potentially differs from how assault is defined under State law, FTA believes it is critical to ensure the definition used in the National Safety Plan, including in the performance measurement context, is consistent with the statutory and NTD definition. This is because the NTD is the primary source of data used for performance target setting. Moreover, Safety Committees must set safety risk reduction program performance targets using a 3-year rolling average of NTD data, as required by 49 U.S.C. 5329(d)(4)(A). For additional information regarding the NTD definition of ''assault'' and ''assault on a transit worker,'' FTA refers readers to the **Federal Register** notice finalizing the recent NTD Safety and Security Reporting requirements (88 FR 11506).

FTA appreciates the requests for additional guidance from FTA about the definition of ''assault on a transit worker'' and how it should be applied. The NTD program serves as FTA's system for collection of assaults on transit worker data and ensures all associated reporting requirements are clarified, including definitional questions stemming from the terms ''knowingly'' and ''with intent'' in the definition of ''assault on a transit worker.'' Further, the NTD program provides guidance on the new assault on a transit worker reporting requirements to the NTD reporting community through (1) annual messaging around updates to reporting requirements, (2) regular communications with reporters (both through the system's blast messaging, and between the reporter and their assigned validation analyst), (3) an updated Frequently Asked Questions (FAQ) section on the FTA website specific to assaults on transit workers, and (4) updates to guidance and training.

The NTD program has developed several training opportunities and guidance materials to help agencies address the new assault on transit worker reporting requirements. The 2023 NTD Safety and Security Reporting Policy Manual provides detailed guidance about safety and security reporting, including assaults on transit workers. In addition, the 2023 safety and security quick reference guides, both for rail and non-rail modes, define reportable events and identify reporting thresholds. A webinar on 2023 Safety & Security Updates: Reporting Assaults on Transit Workers, was provided to the public on April 27, 2023, and is available for viewing online. Finally, the NTD program develops courses pertaining to safety reporting for full reporters (rail and non-rail) as well as reduced reporters (see the National Transit Institute (NTI) website for schedule—*https://www.ntionline.com/events-2/*).

FTA appreciates the comments received regarding consistency in event definitions across FTA programs and will take the need for consistency into consideration as it develops its pending safety rulemakings. FTA confirms that the major events and major event rate safety performance measures include all safety and security major events as defined by the NTD. This creates consistent requirements across transit agencies and ensures definitional alignment across safety programs. For this reason, FTA disagrees that it is necessary to delay implementation of the safety performance measures.

FTA disagrees with the commenter who suggested transit agencies should define what events to include in the major events safety performance measures because FTA believes this approach would undercut efforts to ensure consistency of performance measurement requirements across the industry. FTA's proposed approach is consistent with previous PTASP safety performance measurement guidance, which used the NTD major event

definition for the previous safety event performance measures.

2. Required Safety Performance Measures for All Agencies Subject to the PTASP Regulation

Additional Measures

Comments: Several commenters recommended that FTA add required safety performance measures in addition to the 14 measures proposed in the National Safety Plan. One commenter recommended that FTA add measures for the pedestrian collision rate of mobility assistive device users and the number of sidewalks, crosswalks, and pedestrian signals that are compliant with the Americans with Disabilities Act (ADA). Another commenter requested that FTA add safety performance measures gauging connectivity and transit agencies' adoption of preventative measures and technologies. One commenter urged FTA to include a performance measure regarding suicide attempts and deaths.

Another commenter recommended that the National Safety Plan should include performance measures for the total numbers of collisions, transit worker fatalities, and transit worker injuries. The commenter expressed concern that only using rate-based performance measures for such events could obscure their scope at larger transit agencies. It stated that there is no clear distinction explaining why FTA would require both total numbers and rates for other performance measures, but only rates for those three.

Response: FTA considered each of the suggestions regarding additional safety performance measures for all transit agencies subject to the PTASP regulation. However, FTA declines to adopt the suggestions and establishes only the safety performance measures identified in its proposal. FTA believes these safety performance measures provide a comprehensive look at transit agencies' safety performance, without attempting to identify every measure that an agency may select and enable each agency to monitor safety performance based on data that is collected by the NTD.

Many of the measures suggested by commenters, while useful measures, are not data points that FTA currently collects through the NTD. These include measures recommended by commenters such as: pedestrian collision rate of mobility assistive device users; the number of sidewalks, crosswalks, and pedestrian signals that are ADA compliant; measures gauging connectivity; and technology adoption rates. In the final National Safety Plan, FTA is only adding new measures that are based on data that agencies currently report to the NTD. This approach provides consistency across the industry and helps minimize data-related collection burdens.

FTA appreciates the recommendation that FTA require transit agencies to set safety performance targets for total counts of collisions, transit worker fatalities, and transit worker injuries. FTA believes that safety issues related to these three areas justify the establishment of related safety performance measures for all agencies subject to the PTASP regulation. To this end, FTA has established performance measures regarding the rates of collisions, transit worker fatalities, and transit worker injuries. However, as described in the next section below, several commenters expressed concern about the burden related to new safety performance measures. FTA believes that establishing only rate-based safety performance measures for collisions, transit worker fatalities, and transit worker injuries strikes a reasonable balance between ensuring that transit agencies are monitoring safety performance related to these important issues and limiting the burden that setting additional performance targets would impose. Therefore, FTA declines to establish safety performance measures for total counts of collisions, transit worker fatalities, and transit worker injuries. Transit agencies may determine a need to put in place additional performance measures, such as total counts of collisions, transit worker fatalities and transit worker injuries, and to set associated safety performance targets.

FTA disagrees that the scope of safety concerns will be obscured at large transit agencies by not requiring all agencies to set safety performance targets for the total numbers of collisions, transit worker fatalities, and transit worker injuries. The safety performance measures in the National Safety Plan do not limit visibility into an agency's safety performance. Safety data analysis at a transit agency should not be limited to safety performance targets. FTA expects that transit agencies will use additional contextual data to understand safety performance beyond the required safety performance measures and safety performance targets.

Regarding the proposal to include safety performance measures related to suicides, FTA acknowledges that for many transit agencies suicide is an important safety concern. FTA notes that suicides are a subset of two safety performance measures in the National Safety Plan—major events and collisions. FTA also notes that suicide concerns may vary significantly across the transit industry based on system type and other transit agency operational realities. FTA does not believe it is necessary to require all transit agencies to set safety performance targets for suicide-related safety performance measures because of this varied safety risk and declines to establish suicides as a performance measure in the National Safety Plan. However, FTA notes that transit agencies may voluntarily establish additional safety performance measures, such as suicide counts and rates, and set associated safety performance targets based on needs identified through Safety Risk Management and Safety Assurance activities.

Burden

Comments: Two commenters expressed concern that the proposed increase of safety performance measures for all agencies subject to the PTASP regulation from seven to 14 measures would result in increased administrative and data reporting burden for transit agencies. Further, the commenters urged FTA to consider the burden on specific types of providers, such as rail transit providers who must comply with State Safety Oversight Agency requirements, and small and medium sized transit agencies with limited resources. One commenter stated that rail transit agencies operating multiple other modes and serving large urbanized areas may be required to have up to 66 performance targets across the general and safety risk reduction program performance measures. The commenter requested that FTA coordinate with the industry on the feasibility of these changes. Another commenter requested that FTA offer training, technical assistance, and additional funding to assist agencies with compliance.

One commenter noted that the Pedestrian Collision Rate and Vehicular Collision Rate measures may be particularly burdensome because they have not been collected by the NTD in the past.

Response: FTA appreciates the potential burden related to increasing the number of safety performance measures for all agencies subject to the PTASP regulation from seven to 14. FTA has thoroughly considered the effects of these measures on different types of providers, including small providers and rail transit agencies serving large urbanized areas, and has taken these effects into consideration when finalizing these performance measures. To reduce data analysis

burden on transit agencies, FTA has taken care to ensure that all new safety performance measures are data points that transit agencies report to the NTD on an ongoing basis. As of the 2023 NTD report year, agencies track, record, and report this information as part of their NTD reporting requirements. Agencies should have access to these records internally and may download these data for their agency and other transit agencies from the NTD data portal at *https://www.transit.dot.gov/ntd/ntd-data.* Importantly, FTA also notes that the National Safety Plan does not require transit agencies to submit data or safety performance targets to FTA. FTA appreciates the comment regarding the importance of industry review and feedback regarding safety performance measures. FTA sought industry feedback on the performance measures by publishing the proposed National Safety Plan in the **Federal Register** for public comment.

Regarding the number of safety performance measures for all transit agencies subject to the PTASP regulation, FTA agrees with the commenter noting that some providers will be required to set more than 14 safety performance targets based on these measures. As with existing safety performance measurement requirements, transit agencies set safety performance targets through PTASP by mode. Through previous guidance, FTA has identified three modal groups for PTASP performance target setting: fixed route bus, non-fixed route bus, and rail. This means that transit agencies that provide service within all three of these groups already have been setting 21 safety performance targets per year through PTASP based on the performance measures established under the 2017 National Safety Plan. Based on the safety performance measures that FTA is establishing under the new National Safety Plan, transit agencies serving all three modal groups would set 42 safety performance targets per year. In addition, the Safety Committee of transit agencies serving large urbanized areas with service in all three modal groups would set 24 annual safety performance targets for the safety risk reduction program. This therefore raises the total number of safety performance targets to 66 for certain providers.

In finalizing these measures, FTA has worked to minimize burden. FTA notes that 7 of the 8 safety performance measures for the safety risk reduction program overlap with the safety performance measures required of all agencies subject to the PTASP regulation. To reduce burden associated with target setting, transit agencies serving large urbanized areas may opt to use the same safety performance target set by the Safety Committee for the safety risk reduction program to satisfy the general safety performance target requirement for overlapping measures. In effect, this reduces the minimum number of required safety performance targets from 66 to 45 for providers serving large urbanized areas with service in all three modal groups. Further, transit agencies now have years of experience setting annual safety performance targets, which alleviates the burden of additional measures. Additionally, all of the new measures represent data the agencies track and report to the FTA through the NTD program, which helps to limit data management and analysis burden. FTA notes that the new safety performance measures identified by FTA relate to transit worker safety and transit collisions, two safety concerns addressed directly by the Bipartisan Infrastructure Law.

FTA is committed to developing technical assistance and training to support transit agency compliance with safety performance measurement and target setting requirements, including tools and materials published through the PTASP TAC, as well as webinars, workshops, and training opportunities. Further, FTA has made direct one-on-one technical assistance available to the transit industry through the PTASP TAC. FTA encourages transit agencies with questions about any PTASP related requirement, including safety performance measurement, to contact the PTASP TAC for direct technical assistance.

FTA disagrees with the commenter who argued that the Pedestrian Collision Rate and Vehicular Collision Rate measures may be particularly burdensome because they are tied to data points that have not been collected in the past. While neither Pedestrian Collision Rate nor Vehicular Collision Rate were required safety performance measures in the past, transit agencies are now required to report this collision data to the NTD. These data therefore should be readily available to transit agencies, which FTA believes alleviates the potential burden.

Major Events

Comment: One commenter questioned whether FTA should adopt the proposed general major events performance measure, given that the measure is also included under the safety risk reduction program and FTA proposed separate performance measures for specific categories of safety and security events. This commenter also stated that major events is a new safety performance measure, but the measure is not noted as ''new'' in the updated National Safety Plan.

Response: FTA believes the major event performance measure should be included in both the set of general safety performance measures and the set of measures for the safety risk reduction program because not all transit agencies are required to have a safety risk reduction program. Specifically, agencies that do not serve a large urbanized area are only subject to the general safety performance measurement requirements. Further, FTA does not believe that including more granular measures such as collision rate or assaults on a transit worker rate causes broader measures such as major event rate to be less valuable. To the contrary, overall major event performance trends can serve as useful indicators for transit agencies of all sizes. FTA appreciates the comment about whether the major events performance measure is new. While the 2017 version of the National Safety Plan includes a performance measure for ''safety events'' as opposed to ''major events,'' the major event performance measure is not new in practice. Previous PTASP safety performance measurement guidance advises that the safety event performance measure is based on the NTD major event reporting threshold. The two measures therefore are synonymous in practice. Accordingly, FTA has not designated the measure as ''new'' in the updated National Safety Plan.

Collisions

Comment: One commenter supported the inclusion of rate-based performance measures for pedestrian collisions and vehicular collisions.

Response: FTA appreciates the support for these measures.

Assaults on Transit Workers

Comments: FTA received several comments regarding the assaults on transit workers performance measures. For FTA's response regarding the definition of ''assault on a transit worker,'' please refer to the ''Definitions'' section of this notice above.

One commenter expressed general support for the performance measures, as well as the transit worker injury rate and transit worker fatality rate measures. However, it argued that the National Safety Plan and proposed safety performance measures will result in significant data collection gaps and fall short of ensuring transit agencies

have the data necessary to address these issues. This commenter, along with one other commenter, urged FTA to split the assault on a transit worker measures into job functions or crafts, such as operators, custodial workers, station agents, and other frontline workers in non-operating crafts. One commenter requested that the performance measures separate physical from non-physical assaults.

Another commenter opposed including assaults on transit workers as a performance measure. Two commenters urged FTA to address transit security and emergency preparedness as a separate area of regulatory focus from safety events. One of these commenters requested additional clarification on the difference between safety and security events, and between safety risk management and security risk management. The second commenter requested that FTA socialize any security and emergency preparedness guidance with the Department of Homeland Security (DHS).

One commenter recommended that FTA consider requiring the normalization of assault on transit worker data by unlinked passenger trips (UPT) in addition to vehicle revenue miles (VRM). Another commenter questioned whether VRM is a useful metric for this measure and the safety risk reduction program assault measure, noting that it may not provide meaningful data for assaults on transit workers not employed in operating roles.

Response: FTA appreciates the commenters' general support for the assaults on transit worker safety performance measures. FTA disagrees that the National Safety Plan and proposed safety performance measures will result in data collection gaps or will prevent transit agencies in any way from collecting or analyzing data to support the analysis of transit worker assault-related issues. The safety performance measures defined in the National Safety Plan do not create any data collection requirements. Nor do they prevent transit agencies from collecting and analyzing data related to assaults on transit workers.

FTA appreciates the commenter's suggestion that FTA should require transit agencies to set safety performance targets for more granular safety performance measures related to assaults on transit workers such as measures specific to job functions or crafts. However, FTA's NTD program does not currently collect assault on transit worker data at such a detailed level. As such, FTA declines to establish these more granular measures in the National Safety Plan. FTA notes that this does not prevent a transit agency from establishing safety performance measures such as assaults against custodians or assaults against station agents and setting safety performance targets for these measures in addition to the required safety performance measures and targets.

FTA also appreciates the comment recommending that FTA require all transit agencies to set separate safety performance targets for physical and non-physical assaults on transit workers. FTA revised NTD reporting in 2023 to capture this additional level of detail. While additional data analysis and safety performance monitoring of more detailed aspects of assaults on transit workers may offer value to transit agencies based on their operating realities, FTA declines at this time to establish safety performance measures for the physical and non-physical subsets of assaults on transit workers. Both these types of assaults are included in the larger performance measures for assaults on transit workers, and both are therefore captured within the required PTASP safety performance targets. FTA expects that a transit agency, through its SMS processes, will identify and address any specific safety concerns regarding assaults on transit workers, both physical and non-physical. Transit agencies may set additional targets, as needed, on a voluntary basis to support this process.

FTA disagrees with the commenter that recommended FTA remove ''assaults on transit worker'' from the performance measures and the recommendations to address transit security as a separate area of focus. FTA appreciates that some transit agencies treat an assault on a transit worker as both a safety and a security event. Congress directed FTA to address assaults on transit workers through both the NTD and FTA's safety program as part of FTA's work to improve safety at transit systems across the country. Accordingly, FTA declines to adopt this suggestion. FTA also appreciates that there can be a distinction between transit safety and security and FTA coordinates with other Federal agencies, including DHS, as appropriate and practicable when developing guidance in this area.

FTA appreciates suggestions from commenters regarding normalization alternatives for calculating rates of assaults on transit workers. While other metrics like UPT may provide alternative risk exposure measurements, FTA disagrees with changing the performance measure as proposed in the National Safety Plan. As a general practice and according to existing PTASP program guidance and technical assistance, FTA calculates performance rates using service provided (VRM) and not service consumed (UPT). For consistency and to limit safety performance measurement burden, FTA continues to use VRM for the required safety performance measure rates. Further, analysis performed within FTA demonstrates minimal differences when evaluating trends of assaults on transit workers per VRM or per UPT. As noted above, transit agencies have the flexibility to establish additional measures beyond the 14 established by the National Safety Plan. A transit agency may opt to also establish additional safety performance measures such as rates of assaults on transit workers that use UPT or other normalizers such as revenue hours.

After consideration of comments received, FTA is adopting the performance measures for all agencies subject to the PTASP regulation as proposed.

3. Safety Performance Measures for the Safety Risk Reduction Program

FTA received several comments about PTASP safety risk reduction programs that are outside the scope of the proposed National Safety Plan. In the National Safety Plan, FTA proposed safety risk reduction program performance measures and re-stated statutory requirements for such programs. FTA did not propose specific details in the National Safety Plan regarding safety risk reduction program implementation, target setting, or the reallocation of the safety set-aside when such targets are missed. FTA addressed comments on these topics in the PTASP final rule. Accordingly, this section of the notice only addresses comments related to the safety risk reduction program safety performance measures.

Relationship to Other Performance Measures

Comments: Two commenters asked for clarification on the distinction and relationship between the safety performance measures for all agencies subject to the PTASP regulation and the safety performance measures for the safety risk reduction program, given that some of the measures overlap. Another commenter requested clarification on the possibility of an agency serving a large urbanized area having two different targets for a similar measure: one as part of the general PTASP safety performance target requirements and another under the safety risk reduction program. The commenter argued that

this could lead to confusion about which target takes precedence and that presenting performance measures in two separate charts in the National Safety Plan may be overly complicated. Another commenter urged streamlining the two types of performance measures to remove any duplication and reduce burden on transit agencies. The commenter noted that transit agencies are already analyzing many of the proposed measures through their existing SMS processes.

Response: The Bipartisan Infrastructure Law introduces new safety risk reduction program performance target requirements for Section 5307 recipients that serve an urbanized area of 200,000 or more at 49 U.S.C. 5329(d)(4). This is a separate requirement from the existing general performance target setting required of all transit agencies subject to the PTASP regulation under 49 CFR 673.11(a)(3). The general safety performance measures and the safety risk reduction program safety performance measures have different programmatic purposes, are shaped by different statutory requirements, and result in different outcomes in instances where an associated safety performance target is missed. For example, per 49 U.S.C. 5329(d)(4), safety performance targets for the safety risk reduction program must be set by the Safety Committee using a three-year rolling average of data reported to the NTD, and failure to meet a safety performance target in the safety risk reduction program triggers statutorily required actions related to a transit agency's safety set-aside. These statutory requirements do not apply to the general safety performance targets required under the PTASP regulation. Due to these differences, FTA believes it is necessary to establish two separate categories of safety performance measures and believes it is helpful to visually distinguish them in two separate charts in the National Safety Plan.

FTA appreciates the potential burden associated with FTA establishing the same measure under both sets of performance measures and the concern that transit agencies are already analyzing many of the proposed measures through their existing SMS processes. However, FTA notes that transit agencies serving large urbanized areas may opt to use the same safety performance target set by the Safety Committee for the safety risk reduction program to satisfy the general safety performance target requirement for overlapping measures. In effect, this minimizes burden associated with duplication while preserving flexibility for agencies to set safety performance targets for the general safety performance measures using varied target setting methodologies. FTA agrees that transit agencies should use their SMS to address safety concerns associated with the safety performance measures identified in the National Safety Plan.

FTA acknowledges that it may be possible for an agency's Safety Committee to establish a safety performance target for a measure under the safety risk reduction program, while the agency sets a separate target for the same measure as part of the general safety performance measurement requirements. While agencies and Safety Committees may elect to use the same target for both types of measures, they are not required to do so. FTA notes that while such an arrangement is potentially duplicative, a missed target in the safety risk reduction program and the required general safety performance targets result in different outcomes, as discussed above.

Proposed Measures

Comments: Several commenters requested changes to the proposed safety performance measures for the safety risk reduction program. One commenter expressed concern that some of the proposed measures are broader than the statutory focus of the safety risk reduction program and therefore would detract from the purpose and effectiveness of the program. Specifically, the commenter urged that the safety risk reduction program collision and injury performance measures should be limited to collisions related to bus operator visibility impairments and injuries resulting from assaults on transit workers, respectively.

Another commenter suggested that FTA should add transit worker injury rate as a safety performance measure for the safety risk reduction program. Another noted that agencies should be required to address a reduction of major events under the safety risk reduction program.

Response: FTA appreciates the suggested revisions to the safety risk reduction program performance measures. FTA has thoroughly considered each suggestion but declines to adopt the recommendations. FTA identified the eight safety performance measures for the safety risk reduction program to align with the goals of the safety risk reduction program. One of these goals is to ''improve safety by reducing the number and rates of accidents, injuries, and assaults on transit workers.'' (49 U.S.C. 5329(d)(1)(I)). Based on this statutory language, FTA disagrees with limiting the measures to bus collisions related to visibility impairments and injuries resulting from assaults on transit workers, as suggested by the commenter. FTA continues to believe that the performance measures address the safety risk reduction program goals of an overall reduction in the number and rates of safety events and injuries, as well as a reduction of vehicular and pedestrian safety events involving transit vehicles, and the mitigation of assaults on transit workers.

FTA appreciates the recommendation to add transit worker injury rate to the set of safety performance measures established for the safety risk reduction program. FTA acknowledges the importance of this measure and notes that FTA has included it in the set of general safety performance measures. As discussed above, FTA identified the safety performance measures for the safety risk reduction program to align with the goals of the safety risk reduction program at 49 U.S.C. 5329(d)(1)(I). In the future, FTA may identify safety concerns and safety risk that necessitate additional required safety performance measures within the safety risk reduction program, but at this time declines to establish measures beyond those identified in its proposal. Finally, FTA agrees with the commenter who urged FTA to require agencies to address a reduction of major events under the safety risk reduction program. FTA confirms that FTA proposed major events as a performance measure for the safety risk reduction program and is adopting the measure in this final National Safety Plan.

5. Performance Target Setting and Safety Set-Aside

Comments: FTA received several questions and comments regarding PTASP performance target setting and the safety set-aside. One commenter asked whether the three-year rolling average requirement applies to all PTASP safety performance targets, or only the safety risk reduction program ones. Another commenter urged FTA to state that the general performance targets should be forward-looking, as opposed to being based on three-year rolling averages. Another commenter asked what role Metropolitan Planning Organizations (MPOs) play in the performance measurement process.

Several commenters recommended the development of additional technical assistance or guidance to support the effective development of safety performance targets. Similarly, one commenter recommended that FTA provide technical assistance and

guidance to Safety Committees on best practices for setting safety performance targets based on the updated data requirements of the Bipartisan Infrastructure Law. Several commenters asked FTA to develop guidance to support the industry's implementation of the safety set-aside. One of these commenters asked FTA to work with the industry in developing guidance and examine issues they are facing with this requirement.

Response: FTA appreciates the comments on PTASP performance target setting. While FTA proposed safety performance measures for safety risk reduction programs in the National Safety Plan, detailed implementation requirements regarding performance target setting for the safety risk reduction program are outside the scope of the proposed National Safety Plan. FTA encourages readers to refer to the PTASP final rule for information regarding implementation of PTASP safety risk reduction program target setting. FTA confirms that the three-year rolling average requirement applies only to the safety risk reduction program. As described in the National Safety Plan, transit agencies may define their own methodology for the other targets.

FTA appreciates the comment regarding the role MPOs play in the PTASP performance measurement process and notes that in accordance with 49 U.S.C. 5303(h)(2)(B) and 5304(d)(2)(B), 49 CFR 673.15(a) requires that each State and transit agency must make its safety performance targets available to States and MPOs to aid in the planning process. In addition, § 673.15(b) requires, to the maximum extent practicable, a State or transit agency to coordinate with States and MPOs in the selection of State and MPO safety performance targets.

FTA reiterates that it did not propose specific implementation details in the National Safety Plan regarding the reallocation of the safety set-aside when certain performance targets are missed under 49 U.S.C. 5329(d)(4)(C) and (D). This requirement is addressed in the PTASP final rule at § 673.27(d)(3)(iii), and FTA is not responding to related comments in this notice.

FTA agrees with the commenters that identified the importance of technical assistance and training related to safety performance measurement for agencies and Safety Committees, as well as the safety set-aside requirements. FTA has published technical assistance on performance measurement through the PTASP TAC and will consider developing additional technical assistance on this topic and the safety set-aside for the transit industry in the future.

After consideration of comments received, FTA is finalizing Chapter II of the National Safety Plan as proposed.

D. Chapter III: Voluntary Minimum Safety Standards and Recommended Practices

1. Mandatory Standards

Comments: Several commenters encouraged FTA to move towards mandatory safety standards. Commenters argued that mandatory standards are necessary to improve transit industry safety. Two commenters urged FTA to develop mandatory standards relating to transit worker assault, with one noting that the FAST Act required FTA to issue a rulemaking on this topic.

Some commenters also recommended other topics for mandatory standard development, including standards for connected and automated vehicle (CAV) speed, size, and testing; automatic emergency braking (AEB) and pedestrian automatic emergency braking (PAEB) systems; vehicle design standards to address blind spots, ergonomics, and air quality concerns; and transit worker facilities.

Response: FTA appreciates the comments regarding the need for additional mandatory requirements or standards to improve transit safety. FTA notes that the National Safety Plan does not create new mandatory standards but rather identifies existing voluntary minimum safety standards and recommended practices, which can support transit agencies' efforts to improve transit safety. FTA is committed to addressing safety concerns, including consideration of mandatory requirements or standards where necessary and supported by data. FTA will establish any mandatory standards through separate regulatory processes.

FTA appreciates the commenters requesting mandatory standards regarding assaults on transit workers. FTA has initiated a rulemaking titled Transit Worker and Public Safety (RIN 2132–AB47), which would establish minimum baseline standards and risk-based requirements to address transit worker and public safety based on the most current research and available information, including but not limited to, addressing Section 3022 of the FAST Act. Recently, FTA issued a NPRM related to Rail Transit Roadway Worker Protection (89 FR 20605) that is proposing minimum safety standards for rail transit roadway worker protection. FTA is also exploring additional regulatory action on topics that include fatigue risk management. FTA reiterates that any mandatory standards will be undertaken through the notice and comment process.

2. Voluntary Standards

Comments: Several commenters expressed support for the voluntary nature of the minimum safety standards presented in Chapter III of the National Safety Plan. Two commenters encouraged FTA to further clarify the voluntary nature of the safety standards and recommended practices. One of them suggested moving the standards to an appendix to limit any confusion about the voluntary nature of the content and urged FTA to add a clear statement that the standards are voluntary and that changes to the National Safety Plan will be undertaken through the notice and comment process. One commenter requested that FTA develop additional technical assistance around the voluntary minimum safety standards identified in the National Safety Plan.

Response: FTA appreciates the feedback regarding the voluntary minimum safety standards and recommended practices identified in Chapter III. FTA declines to provide additional clarity on the voluntary nature of the voluntary minimum safety standards and recommended practices and disagrees that an additional appendix is necessary or would be helpful in confirming the voluntary nature of the materials presented in Chapter III. FTA believes that the title of Chapter III clearly articulates the voluntary nature of the standards and resources. FTA appreciates the comment regarding the additional technical assistance focused on the voluntary minimum safety standards and recommended practices outlined in Chapter III and will explore opportunities to develop and provide such assistance, including through the PTASP TAC.

3. Standards and Recommended Practices

Comments: One commenter commended FTA on the proposed new categories of voluntary minimum safety standards and recommended practices, including transit worker safety, pedestrian and bicyclist safety, and rail grade crossing safety. Another supported FTA's statement encouraging transit agencies to work with roadway owners to address safety concerns, noting that FTA should continue to encourage this and first and last-mile connections.

One commenter requested clarification and context regarding how FTA categorized the standards and recommended practices in Chapter III. In particular, this commenter expressed concern that Category A: Transit Worker Safety is particularly confusing.

Two commenters noted that the ''Tools and Strategies for Eliminating Assaults Against Transit Operators, Volume 2: User Guide'' in Subcategory A.1 does not address all law-enforcement related challenges that transit agencies may experience, including shortages of law enforcement officers and competing demands with a municipality's emergency services needs.

Two commenters recommended specific additional resources for inclusion in Chapter III. One commenter recommended inclusion of several NTSB recommendations, specifically in Categories A, B, C, and I. This commenter also recommended adding Transit Cooperative Research Program (TCRP) Report 149, ''Improving Safety-Related Rules Compliance in the Public Transportation Industry.'' Another commenter suggested that FTA include the Equitable Cities ''Arrested Mobility Report'' as a recommended resource.

Response: FTA appreciates commenters' feedback regarding the new categorization of voluntary minimum safety standards and recommended practices. FTA believes these categories help to effectively organize strategies to address industry safety concerns, including transit worker safety, pedestrian and bicyclist safety, and rail grade crossing safety. Similarly, FTA appreciates the support for FTA's statement encouraging transit agencies to work with roadway owners to address safety concerns and agrees with the commenter's statement about challenges to further incorporate first and last mile connections using micromobility systems.

With regards to the comment about the organization of Category A, the category breaks the topic of transit worker safety into three subcategories: transit worker assault prevention; roadway worker protection; and fatigue management, fitness for duty, and employee distraction. FTA believes that this organization clearly separates the three areas of voluntary minimum safety standards and recommended practices included under this category and declines to revise the category substructure.

FTA appreciates the comments regarding the ''Tools and Strategies for Eliminating Assaults Against Transit Operators, Volume 2: User Guide'' that FTA has included in category A.1. While this resource may not fully discuss law enforcement officer shortages, FTA believes that it offers valuable information and approaches to help transit agencies identify and deploy strategies to counter assaults against transit operators. Further, the document was developed to help transit agencies improve the safety and security of operators within existing resource and budgetary constraints and was developed with an understanding that the needs and available resources of these agencies are often different depending on their size and scope of operations.

In response to comments, FTA has added two additional resources in the final National Safety Plan: TCRP Report 149 and NTSB recommendation R–09–11 regarding programs to identify and address sleep apnea and other sleep disorders. TCRP Report 149 identifies potential best practices for all elements of a comprehensive approach to safety-related rules compliance and offers the transit industry valuable information for developing or evaluating rules compliance programs. FTA did not include all the NTSB recommendations suggested by the commenter as many of these were issued to a single entity and as such may not be directly applicable to the transit industry. However, FTA did include R–09–11, which was recommended by the NTSB to the rail transit industry.

Finally, FTA appreciates the recommendation regarding the Equitable Cities ''Arrested Mobility Report.'' FTA declines to include this document in Chapter III of the National Safety Plan as it does not include voluntary minimum safety standards or recommended practices for improving public transportation safety.

4. Specific Safety Concerns and Mitigations

Comments: Several commenters urged FTA to include additional standards and recommended practices to Chapter III of the National Safety Plan. Some commenters provided specific examples of transit industry hazards as well as specific safety risk mitigations that may be useful in addressing the associated safety risk. Commenters suggested that FTA consider adding standards and resources to the National Safety Plan related to topics such as: connected technology systems to alert security personnel of potentially dangerous situations; collision avoidance systems; panic buttons and body worn cameras for transit workers; digital methodologies and assessments such as condition-based health indices of transit assets and predictive maintenance solutions; and collision concerns related to the increased weight of bus fleets through electrification. Another commenter argued that FTA could do more through its Office of Research, Demonstration, and Innovation to explore how agencies are using connectivity, innovation, and operational management to address safety issues.

One commenter urged FTA to include safety standards and recommended practices regarding suicide safety events, including consideration of design interventions such as physical barriers, signage noting crisis line numbers, and follow-up care for transit workers who witness suicide events.

Another commenter recommended that when developing standards and recommended practices, FTA should explicitly include the safety of mobility assistive device users on public transportation, including with respect to railroad grade crossings, emergency signage, emergency response, and life safety equipment, and that such users should be considered in all standards as well.

One commenter asked FTA to include strategies to minimize exposure to infectious diseases, including removal of infectious aerosols in the air people breathe, consistent with the Centers for Disease Control and Prevention (CDC) or State health authority guidelines.

One commenter urged FTA to require only standard traffic lights at railroad crossings and to eliminate ''red-red'' flashing lights. Another commenter provided a list of several suggestions to improve transit safety, including platform screen doors for suicide prevention; signal priority; fare gates and security; emergency alarms on vehicles; and grade crossing barriers. Commenters also urged FTA to include standards and recommended practices on other topics outside the scope of transit, such as high-speed passenger rail, highways, municipal zoning, and automobile usage.

Response: FTA appreciates the information commenters have shared to the docket regarding transit industry safety concerns and potential safety risk mitigations. In response to commenters' identification of safety concerns and mitigations, FTA has added resources to Chapter III of the final National Safety Plan as discussed below. Most of these documents were not available during the original development of the proposed National Safety Plan but are now available for inclusion and are responsive to many of the suggestions offered by commenters.

FTA appreciates the comment regarding connectivity, innovation, and

operational management and FTA's efforts to research these topics. Within this area, FTA has added a resource to Chapter III, *Needs Assessment for Transit Rail Transmission-Based Train Control (TBTC).* Further, FTA's Office of Research, Demonstration and Innovation is undertaking a number of related initiatives, including the Transit Worker and Rider Safety Best Practice Research Program as well as four new research programs to address the challenges of: (1) rising assault incidents in transit; (2) advancing autonomous rail transit track inspection technology; (3) improving transit infrastructure condition monitoring; and (4) the Bus Compartment Redesign and Bus of the Future initiatives.

Regarding the topic of challenges related to the electrification of transit fleets and associated concerns raised by commenters, FTA has added the following resources to Chapter III of the National Safety Plan: *Safety and Security Certification of Electric Bus Fleets; Procuring and Maintaining Battery Electric Buses and Charging Systems;* and *Crash Energy Management for Heavy Rail Vehicles, Light Rail Vehicles, and Streetcars.*

In response to the commenter who recommended additional resources on suicide and suicide prevention, FTA added the resource, *Mitigations for Trespasser and Suicide Fatalities and Injuries* to Chapter III of the National Safety Plan.

FTA appreciates the commenter that recommended FTA include the safety of mobility assistive device users on public transportation when developing standards and resources. FTA agrees with commenter on the importance of ensuring the safety of mobility assistive users, especially with respect to railroad grade crossings, emergency signage, emergency response, and life safety equipment. FTA will consider the safety of mobility assistive device users when developing standards or technical assistance.

FTA appreciates the commenter that requested FTA include strategies to minimize exposure to infectious diseases, including removal of infectious aerosols in the air people breathe. FTA coordinated with the Department of Health and Human Services (HHS) prior to publishing the proposed National Safety Plan to identify precautionary and reactive actions required to ensure public and personnel safety and health during an emergency. Following publication of the proposed National Safety Plan, FTA coordinated with HHS again to confirm the voluntary minimum safety standards and recommended practices for inclusion in the final National Safety Plan. FTA has added three related resources to the final National Safety Plan that are responsive to the commenter's suggestion: *Ventilation in Buildings* resources from the Centers for Disease Control (CDC); FTA's *COVID–19 Resource Tool for Public Transportation;* and FTA's *Using Your Safety Management System (SMS) to Mitigate Infectious Disease and Respiratory Hazard Exposure.* FTA has also included additional ventilation-related resources in Category E, including: *Specifications and Guidelines for Rail Tunnel Design, Construction, Maintenance, and Rehabilitation; Specifications and Guidelines for Rail Tunnel Repair and Rehabilitation;* and *Specifications and Guidelines for Rail Tunnel Inspection and Maintenance.*

Finally, FTA appreciates the commenters that offered suggestions regarding railroad crossing light requirements and other safety recommendations. FTA appreciates and has thoroughly considered all these recommendations; however, at this time FTA declines to include them in the final National Safety Plan. FTA notes that these suggestions may be considered when FTA is developing future safety standards and identifying technical assistance needs for transit safety.

Veronica Vanterpool,

Acting Administrator.

[FR Doc. 2024–07392 Filed 4–9–24; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2024–0001 (Notice No. 2024–05)]

Hazardous Materials: Information Collection Activities

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Requests (ICRs) discussed below will be forwarded to the Office of Management and Budget (OMB) for renewal and extension. These ICRs describe the nature of the information collections and their expected burdens. A **Federal Register** notice and request for comments with a 60-day comment period on these ICRs was published in the **Federal Register** on January18, 2024 [89 FR 3494] under Docket No. 2024–0001 (Notice No. 2024–01). PHMSA received a comment from the National Propane Gas Association in support of the burden estimates for the three OMB control numbers outlined in the 60-day notice.

DATES: Interested persons are invited to submit comments on or before May 10, 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.

We invite comments on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the Department's estimate of the burden of the proposed information collection; (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 the use of automated collection techniques or other forms of information technology.

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

FOR FURTHER INFORMATION CONTACT: Steven Andrews or Nina Vore, Standards and Rulemaking Division, (202) 366–8553, *ohmspra@dot.gov,* Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: Section 1320.8 (d), title 5, Code of Federal Regulations (CFR) requires PHMSA to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies information collection requests that PHMSA will be submitting to the Office of Management and Budget (OMB) for renewal and extension. These information collections are contained in 49 CFR 171.6 of the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180). PHMSA has revised burden

estimates, where appropriate, to reflect current reporting levels or adjustments based on changes in proposed or final rules published since the information collections were last approved. The following information is provided for each information collection: (1) title of the information collection, including former title if a change is being made; (2) OMB control number; (3) summary of the information collection activity; (4) description of affected public; (5) estimate of total annual reporting and recordkeeping burden; and (6) frequency of collection. PHMSA will request a 3-year term of approval for each information collection activity and will publish a notice in the **Federal Register** upon OMB's approval.

PHMSA requests comments on the following information collections:

Title: Cargo Tank Specification Requirements.

OMB Control Number: 2137–0014.

Summary: This information collection consolidates and describes the information collection provisions in 49 CFR parts 107, 178, and 180 involving the manufacture, qualification, maintenance, and use of all specification cargo tank motor vehicles. It also includes the information collection and recordkeeping requirements for persons who are engaged in the manufacture, assembly, requalification, and maintenance of Department of Transportation (DOT) specification cargo tank motor vehicles. The types of information collected include:

(1) *Registration Statements:* Cargo tank manufacturers and repairers, as well as cargo tank motor vehicle assemblers, are required to be registered with DOT and must furnish information relative to their qualifications to perform the functions in accordance with the HMR. DOT uses the registration statements to identify these persons to ensure they possess the knowledge and skills necessary to perform the required functions and that they are performing the specified functions in accordance with the applicable regulations.

(2) *Requalification and Maintenance Reports:* These reports are prepared by persons who requalify or maintain cargo tanks. This information is used by cargo tank owners, operators and users, and DOT compliance personnel to verify that the cargo tanks are requalified, maintained, and in proper condition for the transportation of hazardous materials.

(3) *Manufacturers' Data Reports, Certificates, and Related Papers:* These reports are prepared by cargo tank manufacturers and certifiers. They are used by cargo tank owners, operators, users, and DOT compliance personnel to verify that a cargo tank motor vehicle was designed and constructed to meet all requirements of the applicable specification. The following information collections and their burdens are associated with this OMB Control Number.

Please note that these estimates may be rounded for readability:

Information collection	Annual respondents	Total annual responses	Time per response	Total annual burden hours
Registration—Cargo Tank Manufacturers	24	24	20 minutes	8
Registration—Repair Facilities	33	33	20 minutes	11
Registration—Design Certifying Engineers & Registered Inspectors.	1,110	1,110	20 minutes	370
Registration—Recordkeeping	117	117	15 minutes	29
Updating a Cargo Tank Registration	145	145	15 minutes	36
Design Certificates for Prototypes	55	55	2.5 hours	138
Design Certificates for Prototypes—Recordkeeping	7	7	15 minutes	2
Manufacture's Data Reports or Certificate and Related Papers.	145	6,960	30 minutes	3,480
Manufacture's Data Reports or Certificate and Related Papers—Recordkeeping.	700	700	15 minutes	175
Completion of Manufacturer's Data Report—New Cargo Tanks.	145	4,785	30 minutes	2,393
Completion of Manufacturer's Data Report—Remanufactured Cargo Tanks.	145	1,015	30 minutes	508
Completion of Manufacturer's Data Report—Recordkeeping	145	580	15 minutes	145
Cargo Tank Repair/Modification Reports	195	15,015	5 minutes	1,251
Testing and Inspection of Cargo Tanks—Visual Inspections	1,654	24,600	30 minutes	12,300
Testing and Inspection of Cargo Tanks—External Visual Inspections.	1,654	123,000	30 minutes	61,500

Affected Public: Manufacturers, assemblers, repairers, requalifiers, certifiers, and owners of cargo tanks.

Annual Reporting and Recordkeeping Burden:

Number of Respondents: 6,274.

Total Annual Responses: 178,146.

Total Annual Burden Hours: 82,346.

Frequency of Collection: On occasion.

Title: Testing, Inspection, and Marking Requirements for Cylinders.

OMB Control Number: 2137–0022.

Summary: Requirements in § 173.301 for the qualification, maintenance, and use of cylinders include periodic inspections and retesting to ensure continuing compliance with packaging standards. Information collection requirements address registration of retesters and marking of cylinders by retesters with their identification number and retest date following the completion of required tests. The cylinder owner or designated agent must keep records showing the results of inspections and retests until either expiration of the retest period or until the cylinder is re-inspected or retested, whichever occurs first. These requirements ensure that retesters have the qualifications to perform tests and identify to cylinder fillers and users that cylinders are qualified for continuing use. Information collection requirements in § 173.303 require that fillers of acetylene cylinders keep, for at least 30 days, a daily record of the representative pressure to which cylinders are filled. The following information collections and their burdens are associated with this OMB Control Number.

Note, that these estimates may be rounded for readability:

Information collection	Annual respondents	Total annual responses	Time per response	Total annual burden hours
Cylinder Manufacture Marking	225	101,250	7.17 minutes	12,099
Cylinder Manufacture Inspector's Report—Reporting	225	225	30 minutes	113
Cylinder Manufacture Inspector's Report—Recordkeeping	30	30	12 minutes	6
Record of Alloy Added to Cylinder—Reporting	23	23	1 hour	23
Cylinder Requalification Marking—Reporting	15,000	14,550,000	46 seconds	185,917
Cylinder Requalification Record—Reporting	15,000	14,550,000	45 seconds	181,875
Cylinder Requalification Record—Recordkeeping	330	330	6 minutes	33
Recent Recalibration Record	2,300	4,600	5 minutes	383
Repair, Rebuilding, or Reheat Treatment Records	47	2,350	12 minutes	470
Repair, Rebuilding, or Reheat Treatment Records—Recordkeeping.	6	6	10 minutes	1
Changing Marked Service Pressure	8	8	15 minutes	2

Affected Public: Fillers, owners, users, and retesters of reusable cylinders.

Annual Reporting and Recordkeeping Burden:

Number of Respondents: 33,194.

Total Annual Responses: 29,208,822.

Total Annual Burden Hours: 380,922.

Frequency of Collection: On occasion.

Title: Container Certification Statements.

OMB Control Number: 2137–0582.

Summary: Shippers of explosives, in freight containers or transport vehicles by vessel, are required to certify on shipping documentation that the freight container or transport vehicle meets minimal structural serviceability requirements. This requirement ensures an adequate level of safety for the transport of explosives aboard vessel and consistency with similar requirements in international standards. The following information collections and their burdens are associated with this OMB Control Number.

Please note that these estimates may be rounded for readability:

Information collection	Annual respondents	Total annual responses	Time per response	Total annual burden hours
Freight Container Packing Certification	620	890,000	1 minute	14,833
Class 1 (explosives) Container Structural Serviceability Statement.	30	4,500	1 minute	75

Affected Public: Shippers of explosives in freight containers or transport vehicles by vessel.

Annual Reporting and Recordkeeping Burden:

Number of Respondents: 650.

Total Annual Responses: 894,500.

Total Annual Burden Hours: 14,908.

Frequency of Collection: On occasion.

Issued in Washington, DC, on April 5, 2024, under authority delegated in 49 CFR 1.97.

Steven W. Andrews, Jr.,

Acting Chief, Regulatory Review and Reinvention Branch, Office of Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2024–07617 Filed 4–9–24; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2004–12

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service (IRS), 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 information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning, Health Insurance Costs of Eligible Individuals.

DATES: Written comments should be received on or before June 10, 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.* Include ''OMB Number 1545–1875—Health Insurance Costs of Eligible Individuals'' in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this collection should be directed to Martha R. Brinson, at (202) 317–5753, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Health Insurance Costs of Eligible Individuals.

OMB Number: 1545–1875.

Revenue Procedure Number: 2004–12.

Abstract: This procedure informs states how to elect a health program to be qualified health insurance for purposes of the health coverage tax credit (HCTC) under section 35 of the Internal Revenue Code. The collection of information is voluntary. However, if a state does not make an election, eligible residents of the state may be impeded in their efforts to claim the HCTC.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: States, Local, or Tribal Government.

Estimated Number of Respondents: 51.

Estimated Time per Respondent: 30 mins.

Estimated Total Annual Burden Hours: 26.

The following paragraph applies to all of 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 as long as 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. Comments will be of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on 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: April 3, 2024.

Martha R. Brinson,

Tax Analyst.

[FR Doc. 2024–07605 Filed 4–9–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service (IRS), 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 information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning, Payout Requirements for Type III Supporting Organizations that are not Functionally Integrated.

DATES: Written comments should be received on or before June 10, 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.*

Include ''OMB Number 1545–2157-Payout Requirements for Type III Supporting Organizations that are not Functionally Integrated'' in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this collection should be directed to Martha R. Brinson, at (202) 317–5753, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Payout Requirements for Type III Supporting Organizations that are not Functionally Integrated.

OMB Number: 1545–2157.

Regulation Project Number: TD 9605.

Abstract: This document contains final regulations regarding the requirements to qualify as a Type III supporting organization that is operated in connection with one or more supported organizations. The regulations reflect changes to the law made by the Pension Protection Act of 2006. The regulations will affect Type III supporting organizations and their supported organizations.

Current Actions: There is no change in the paperwork burden previously approved by OMB. However, the estimated number of responses were updated based on current filing data.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions, State, local or Tribal governments.

Estimated Number of Respondents: 6,089.

Estimated Time per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 12,178.

The following paragraph applies to all of 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 as long as 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. Comments will be of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on 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: April 3, 2024.

Martha R. Brinson,

Tax Analyst.

[FR Doc. 2024–07603 Filed 4–9–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0132]

Agency Information Collection Activity Under OMB Review: Application in Acquiring Specially Adapted Housing or Special Home Adaptation Grant

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Refer to ''OMB Control No. 2900–0132.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20420, (202) 266–4688

or email *maribel.aponte@va.gov*. Please refer to ''OMB Control No. 2900–0132'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 44 U.S.C. 3501–21. 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 Forms 26–4555 is used to gather the necessary information to determine Veteran eligibility for the SAH or SHA grant. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 89 FR 7770 on February 5, 2025, page 7770–7771.

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.

Dorothy Glasgow,

VA PRA Clearance Officer, (Alt), Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2024–07621 Filed 4–9–24; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 89 Wednesday,
No. 70 April 10, 2024

Part II

Department of Housing and Urban Development

24 CFR Parts 5, 245, 882, et al.
Reducing Barriers to HUD-Assisted Housing; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5, 245, 882, 960, 966, and 982

[Docket No. FR–6362–P–01]

RIN 2501–AE08

Reducing Barriers to HUD-Assisted Housing

AGENCY: Office of the Secretary, U.S. Department of Housing and Urban Development (HUD).

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations for certain HUD Public and Indian Housing and Housing Programs. The proposed amendments would revise existing regulations that govern admission for applicants with criminal records or a history of involvement with the criminal justice system and eviction or termination of assistance of persons on the basis of illegal drug use, drug-related criminal activity, or other criminal activity. The proposed revisions would require that prior to any discretionary denial or termination for criminal activity, PHAs and assisted housing owners take into consideration multiple sources of information, including but not limited to the recency and relevance of prior criminal activity. They are intended to minimize unnecessary exclusions from these programs while allowing providers to maintain the health, safety, and peaceful enjoyment of their residents, their staffs, and their communities. The proposed rule is intended to both clarify existing PHA and owner obligations and reduce the risk of violation of nondiscrimination laws.

DATES: Comments are due no later than June 10, 2024.

ADDRESSES: Interested persons are invited to submit comments regarding this rule. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *http://www.regulations.gov* website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that website to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All comments and communications properly submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments 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 from individuals with speech or 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.*

In accordance with 5 U.S.C. 553(b)(4), a summary of this proposed rule may be found at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Danielle Bastarache, Deputy Assistant Secretary for Public Housing and Voucher Programs, Room 4204, U.S. Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 402–1380 (this is not a toll-free number) for the Public Housing and Section 8 programs. Ethan Handelman, Deputy Assistant Secretary for Multifamily Housing, Room 6106, U.S. Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 402–2495 (this is not a toll-free number) for Multifamily Housing programs. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

Everyone deserves to be considered as the individual they are, and everyone needs a safe and affordable place to live. For people with criminal records, having a stable place to live is critical to rebuilding a productive life. Yet too many people who apply for housing opportunities are not given full consideration as individuals, but instead are denied opportunities simply because they have a criminal record. Criminal records are often incomplete or inaccurate, and criminal conduct that occurred years ago may not be indicative of a person's current fitness as a tenant. These unnecessary exclusions disproportionately harm Black and Brown people, Native Americans, other people of color, people with disabilities, and other historically marginalized and underserved communities. In April 2016, HUD issued guidance to all housing providers cautioning that unnecessary and unwarranted exclusions based on criminal records may create a risk of Fair Housing Act liability because they can have an unjustified disparate impact based on race.[1] That guidance advised housing providers that individualized assessments that take into account relevant mitigating information are likely to have a less discriminatory effect than categorical exclusions based on criminal record.

Yet too often, people still are being excluded from HUD-assisted housing for convictions that do not reflect at all on current fitness for tenancy, such as stale convictions that date back more than a quarter century, or those for low-level nonviolent offenses, such as riding a subway without paying a fare. Such exclusions do little to further legitimate interests such as safety, as mounting evidence shows and an increasing number of housing providers and public housing agencies (PHAs) now recognize.

This proposed rule would help standardize practices within HUD programs with respect to prospective tenants. It would provide clearer, common-sense rules and standards to help HUD-subsidized housing providers and PHAs carry out the legitimate and important ends of maintaining the safety

[1] *Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions* (April 4, 2016), available at *https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF.*

of their properties and the surrounding communities and following federal law (which requires exclusion from HUD-assisted housing of people who are engaged in certain conduct or have certain criminal history), but without engaging in overbroad or discriminatory denials of housing. This proposed rule would establish in HUD program regulations a set of practices that already are required of housing providers under state and local law in much of the country; that are consistent with guidance HUD has provided to all housing providers to comply with the Fair Housing Act and to HUD-subsidized providers and PHAs to comply with program rules; and that, as HUD has heard from its industry partners, are already being used and work in practice to effectively balance various equities. In doing so, the proposed rule would clarify a legal landscape that many HUD-subsidized housing providers and PHAs find confusing, leading to divergent practices within HUD programs. While existing HUD regulations generally *permit* a fact-specific, individualized assessment approach, they have not been updated to clearly *require* it.

This proposed rule would cover various HUD programs, including public housing and Section 8 assisted housing programs, as well as the Section 221(d)(3) below market interest rate (BMIR) program, the Section 202 program for the elderly, the Section 811 program for persons with disabilities, and the Section 236 interest reduction payment program, and in doing so would amend existing programmatic regulations. A summary of some of the ways in which these changes would impact different program rules are explained below:

Clarifying what counts as relevant criminal activity and how recently it must have occurred: Existing regulations permit an assisted owner or PHA (for voucher applicants) to prohibit admission when the household has engaged in, ''in a reasonable time prior to admission,'' (1) drug-related criminal activity; (2) violent criminal activity; (3) other criminal activity that would threaten the health, safety, or right to peaceful enjoyment of the premises of other residents; or (4) other criminal activity that would threaten the health or safety of the PHA or owner or any employee, contractor, subcontractor or agent of the PHA or owner. While public housing regulations do not have a similar ''reasonable time prior to admission'' qualifier, there is a ''relevancy'' qualifier preceding these same four substantive categories of criminal activity. Under the proposed rule, PHAs and assisted owners would still be able to deny admission for these four categories of criminal activity; however, the proposed rule would clarify that assisted owners and PHAs may not deny admission for categories of criminal activity beyond those which are specified in the regulations. The proposed rule would require the establishment of a ''lookback period'' limiting the reliance on old convictions and would provide, for all programs, that prohibiting admission for a period of time longer than three years following any particular criminal activity is ''presumptively unreasonable.'' The general rule would be that PHAs and assisted owners cannot make decisions based on criminal history that research indicates is not predictive of future criminal activity; that is irrelevant to safety, health, or fitness for tenancy; or that is based on incomplete or unreliable evidence of criminal activity (*e.g.,* a record for an arrest that has not resulted in a conviction).

Specifying procedural requirements before denying admission: At present, program regulations require PHAs and assisted owners to follow various procedural steps before denying admission based on a criminal record but do not provide important specifics. For example, PHAs and assisted owners must notify the household of the proposed denial, supply a copy of a criminal record, and provide an opportunity to dispute the accuracy and relevancy of the record before denial of admission. However, the current regulations do not specify how much notice a household must receive or the meaning of the opportunity to dispute the accuracy and relevancy of the record prior to a denial of admission. The proposed rule would clarify that tenants shall be given at least 15 days to challenge the accuracy and relevance of the information and to provide any relevant mitigating information prior to an admissions decision.

Requiring a fact-specific and individualized assessment before making a discretionary decision to deny tenancy or admission based on criminal history: Current program regulations note that PHAs and assisted owners ''may consider'' certain circumstances prior to making a discretionary denial of admission or termination decision, and the different program regulations provide incomplete and inconsistent lists of appropriate considerations.[2] HUD is proposing amended language that would make clear that for all discretionary admission and termination determinations, PHAs and assisted owners must consider relevant mitigating circumstances. With respect to admissions decisions, the proposed rule would require a fact-specific and individualized assessment of the applicant, adopting a term and concept that is familiar in the industry but has not previously been required in HUD programs. The proposed rule would harmonize the non-exhaustive list of relevant considerations across programs, setting out some specific factors that will frequently be considered relevant, such as how long ago the offense or incident occurred, mitigating conduct that has taken place since (*e.g.,* evidence of rehabilitation and successful reentry, including employment and tenancy), and completion of drug or alcohol treatment programs. So long as housing providers consider the circumstances relevant to the decision, the ultimate decision as to whether to deny tenancy or admission would remain within their discretion.

Revising and making available tenant selection plans and PHA administrative plans: Under existing rules, owners participating in certain assisted housing programs must have a written tenant selection plan. The proposed rule would require these owners to update their tenant selection plans to reflect the relevant policies they employ within six months following this rule's effective date. The proposed rule would also require PHAs and owners to make PHA administrative plans and tenant selection policies more widely available.

Providing additional guidance for PHAs and owners conducting screenings: When PHAs access criminal records from law enforcement agencies, existing regulations require PHAs to obtain consent from families before accessing their criminal records, require them to be kept confidential, and permit disclosure under limited circumstances. The proposed rule would broaden these protections to be applicable to all criminal record searches conducted by PHAs, as well as to assisted owners where appropriate. The proposed rule also would specify that, except in circumstances where housing providers and PHAs rely exclusively on an applicant's self-disclosure of a criminal record, they may not bar admission for failure to disclose a criminal record unless that criminal record would have been material to the decision.

Clarifying mandatory admission denial standards: Language concerning mandatory admission denials based on criminal activity and alcohol abuse which are required by federal statute is largely left unchanged by the proposed

[2] See 24 CFR 5.852(a), 966.4(l)(5)(vii)(B), and 982.552(c)(2)(i) and (iii).

rule. For example, the requirement that an assisted owner or PHA prohibit admission of individuals ''if any household member has been evicted from federally assisted housing for drug-related criminal activity'' in the last three years unless the ''the circumstances leading to the eviction no longer exist'' has not been modified.[3] Nor have any modifications been made to the prohibition on admission to HUD-assisted housing to those who are ''subject to a lifetime registration requirement under a State sex offender registration program.'' The requirement that assisted owners or PHAs must establish standards to prohibit admission of individuals ''currently engaged in'' illegal use of a drug and in situations where individuals' pattern of illegal drug use or alcohol abuse may interfere ''with the health, safety, or right to peaceful enjoyment of the premises by other resident[s]'' would remain substantively unchanged.

However, HUD proposes adding greater clarification to the definition of ''currently engaging in,'' which as described above triggers a mandatory exclusion with respect to the use of illegal drugs and triggers discretionary exclusion authority with respect to certain criminal activity. The existing regulations provide only that currently engaging in ''means that the individual has engaged in the behavior recently enough to justify a reasonable belief that the individual's behavior is current.'' The proposed rule would provide that a PHA or assisted owner may not rely solely on criminal activity that occurred 12 months ago or longer to establish that behavior is ''current.'' The proposed rule would also require that any such determination be based on a preponderance of the evidence standard and that such a determination take into account mitigating evidence, for example that the individual has successfully completed substance use treatment services.

Specifying standards of proof in admissions and terminations decisions based on criminal activity: Existing regulations are largely silent on the standards of proof that must be met for admissions and terminations decisions based on criminal activity. Where they speak to the subject at all, they state broadly that an assisted owner or PHA may terminate a tenancy when a household member engaged in certain criminal activity, regardless of whether they have been arrested or convicted for such activity, and without satisfying the heightened standard of proof necessary to support a criminal conviction. There is no similar provision in existing regulations regarding admission decisions; nor do existing rules specifically discuss how PHAs and assisted owners may or may not consider arrest records in making either admissions or termination determinations. The proposed rule would (1) prohibit the consideration of arrest records standing alone (in the absence of other reliable evidence of criminal conduct) for any exclusion from housing; and (2) provide that criminal conduct or any other finding on which such an exclusionary decision is made must be based on a preponderance of the evidence. This would establish and clarify certain evidentiary standards and requirements for making key determinations in a manner that is largely consistent with what HUD already recommends in guidance for its housing providers and PHAs.

Implementing limited changes affecting owners accepting Housing Choice Vouchers (HCVs) and Project Based Vouchers (PBVs): Most of the changes in the proposed rule would not apply to owners who participate in the HCV or PBV programs. The proposed rule would not apply most of the changes to owners who participate in the HCV or PBV programs, in order to avoid discouraging owner participation. Those owners who participate in the HCV or PBV programs would still be able to screen for drug-related criminal activity and other criminal activity that is a threat to the health, safety or property of others. The proposed rule would add language to clarify that this includes ''violent'' criminal activity and that owners in the HCV and PBV program must also conduct any screening consistent with the Fair Housing Act, which was not previously spelled out in program regulations. Additionally, for terminations of tenancy, HUD proposes the same standards regarding preponderance of evidence and arrest records as would apply for PHAs and assisted owners. Finally, existing regulations note that owners ''may consider'' certain mitigating circumstances when terminating a tenancy. HUD proposes that, where a termination is based on criminal activity, illegal drug use, or alcohol abuse, an owner may consider an updated set of circumstances—the same circumstances, including mitigating and contextualizing evidence, that that PHAs and assisted owners would be required to consider in the context of admissions and termination decisions.

Collectively, the principles embodied by this proposed rule are meant to ensure that people are considered as individuals in HUD-assisted housing. Requiring housing providers and PHAs to make fact-specific determinations based on the totality of the circumstances, rather than denying opportunities based solely on criminal history, would help ensure that stale, inaccurate, and/or incomplete evidence and stigma surrounding people with criminal justice system involvement do not create unnecessary and counterproductive barriers to safe and affordable housing. Research shows that expanding access to such housing reduces the risk of future criminal justice system involvement and, in doing so, strengthens public safety. To be sure, that does not mean that everyone with a criminal history will satisfy legitimate tenant screening criteria that apply to all applicants equally. Housing providers would retain the authority to screen out individuals who they determine, based on consideration of relevant information, pose a threat to the health and safety of other tenants. What the proposed rule would bar is the categorical, blanket exclusion of people with criminal records without regard to all relevant and contextualizing evidence and consideration of the full life someone has lived.

II. Background

A. Statutory Authority for This Rulemaking

1. HUD's General Statutory Authority To Promulgate Regulations

Federal agencies derive their authority to regulate from Congress. Such authority may be provided through a specific law or from an agency's organic statute. HUD's authority to issue regulations, section 7(d) of HUD's organic statute, the Department of Housing and Urban Development Act, provides: The Secretary may delegate any of his or her functions, powers, and duties to such officers and employees of the Department as he or she may designate, may authorize such successive redelegations of such functions, powers, and duties as he or she may deem desirable, and may make such rules and regulations as may be necessary to carry

[3] HUD is proposing an amendment to these provisions which would clarify that current participation in a substance use treatment program may constitute a changed circumstance allowing for waiver of this 3-year-bar. This amendment and other proposed changes are explained in more detail later in this proposed rule.

out his or her functions, powers, and duties.[4]

2. HUD's Specific Statutory Authority Relevant to This Rulemaking

a. HUD's Authority To Establish Criteria for Selection of Tenants, Occupancy, and Lease Provisions

In 1992, Congress enacted section 13603 of the Housing and Community Development Act (HCDA). (Oct. 28, 1992, Pub. L. 102–550, Title VI, Subtitle C, 643, 106 Stat. 3821). Section 13603 sets forth the authority and standards by which HUD may enact rules to establish criteria for occupancy and provides that the Secretary shall promulgate regulations that establish criteria for selection of tenants and lease provisions in federally assisted housing. The Act requires that ''the criteria provide sufficient guidance to owners and managers of federally assisted housing to enable them to (A) select tenants capable of complying with reasonable lease terms, (B) utilize leases prohibiting behavior which endangers the health or safety of others or violates the right of other tenants to peaceful enjoyment of the premises, (C) comply with legal requirements to make reasonable accommodations for persons with disabilities, and (D) comply with civil rights laws.'' [5]

b. HUD's Authority To Mandate Lease Terms and Conditions

The United States Housing Act of 1937 (42 U.S.C. 1437a, *et seq.*) (''USHA'' or ''the 1937 Act'') provides HUD with authority to include language in contracts with PHAs that require PHAs (and owners) to add specific requirements in lease agreements for federally assisted housing (*e.g.,* 42 U.S.C. 1437d(l), 42 U.S.C. 1437f(d)(o)(6)).

c. HUD's Authority To Establish Evidentiary Standards for Applicants Previously Denied Admission Based on Criminal Activity

The Quality Housing and Work Responsibility Act of 1998 (Pub. L. 105–276, approved Oct. 21, 1998, 112 Stat. 2634–2643) (''QHWRA'') provides that for applicants who have been previously denied admission for criminal activity, PHAs or owners may impose a requirement that such applicants provide ''evidence sufficient'' to show that they have not engaged in that criminal activity within a ''reasonable period'' of time. The statute explicitly outlines that ''the [HUD] Secretary shall by regulation provide'' to PHAs what ''evidence is sufficient.'' 42 U.S.C. 13661(c)(2).

d. HUD's Authority To Make Rules To Carry Out the Fair Housing Act and Other Civil Rights Laws

As noted above, the proposed rule is also an effort to advance compliance with nondiscrimination statutes directed at housing and programs and activities receiving federal financial assistance. The Fair Housing Act of 1968 (42 U.S.C. 3601, *et seq.*) provides that ''the Secretary [of HUD] may make rules (including rules for the collection, maintenance, and analysis of appropriate data) to carry out this subchapter [Fair Housing Act]. The Secretary shall give public notice and opportunity for comment with respect to all rules made under this section.'' 42 U.S.C. 3614(a).

3. Statutory History With Regard to Criminal History

a. U.S. Housing Act of 1937 [6]

Section 1437d(l)(6) of title 42, United States Code, applicable to public housing, requires that PHA leases include a provision stating that any member of a tenant's household may be evicted for drug-related or certain other criminal activity.[7] This section was originally enacted in the Anti-Drug Abuse Act of 1988 (102 Stat. 4181), and was retained in the 1990 National Affordable Housing Act amendments, which redefined the classes of criminal activity to which this prohibition applies (Pub. L. 101–625, section 504, amending section 6(1)(5) of the U.S. Housing Act).

With respect to Section 8 housing leases, the USHA contains language similar to 1437d(l)(6). *See, e.g.,* 42 U.S.C. 1437f(d)(1)(B)(iii), which applies to both project-based and tenant-based section 8.[8] *See also* section 1437f(o)(7)(D), which applies to tenant-based and project-based voucher assistance specifically and mandates virtually identical language in all housing assistance payments contracts between a PHA and an owner.[9] Additionally, section 1437f(o)(6)(C) allows a PHA to elect not to enter into a Housing Assistance Payments contract with an owner who, among other things, ''[R]efuses, or has a history of refusing, to take action to terminate tenancy for activity engaged in by the tenant, any member of the tenant's household, any guest, or any other person under the control of any member of the household that (i) threatens the health or safety of, or right to peaceful enjoyment of the premises by, other tenants or employees of the public housing agency, owner, or other manager of the housing; (ii) threatens the health or safety of, or right to peaceful enjoyment of the residences by, persons residing in the immediate vicinity of the premises; or (iii) is drug-related or violent criminal activity.''

b. Housing Opportunity Program Extension Act

In 1996, the Housing Opportunity Program Extension Act (Pub. L. 104–120, 110 Stat. 834–846, approved March 28, 1996) (''the Extension Act'') amended the United States Housing Act. The Extension Act made an individual who has been evicted from public housing or any Section 8 program for drug-related criminal activity ineligible for admission to public housing and the Section 8 programs for a three-year period, beginning from the date of eviction, unless the individual who engaged in the activity has successfully completed a rehabilitation program approved by the PHA or if the PHA determines that the circumstances leading to the eviction no longer exist.

The Extension Act also required PHAs to establish standards that prohibit occupancy in any public housing unit or participation in a Section 8 tenant-based program by any person the PHA

[4] 42 U.S.C. 3535(d). HUD relied, *inter alia,* on this authority in promulgating the 2001 rulemaking that implemented QHWRA. *See* 66 FR 28792.

[5] 42 U.S.C. 13603(b).

[6] As discussed more fully below, the USHA (or the 1937 Act) has been amended on several occasions with respect to criminal history, including by the Anti-Drug Abuse Act of 1988; the 1990 National Affordable Housing Act amendments; the Housing Opportunity Program Extension Act of 1996; and the Quality Housing and Work Responsibility Act of 1998.

[7] ''Each public housing agency shall utilize leases which . . . (6) provide that any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants or any drug-related criminal activity on or off such premises, engaged in by a public housing tenant, any member of the tenant's household, or any guest or other person under the tenant's control, shall be cause for termination of tenancy . .''.

[8] ''[D]uring the term of the lease, any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants, any criminal activity that threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises, or any drug-related criminal activity on or near such premises, engaged in by a tenant of any unit, any member of the tenant's household, or any guest or other person under the tenant's control, shall be cause for termination of tenancy . . .''

[9] ''[D]uring the term of the lease, any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants, any criminal activity that threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises, or any violent or drug-related criminal activity on or near such premises, engaged in by a tenant of any unit, any member of the tenant's household, or any guest or other person under the tenant's control, shall be cause for termination of tenancy . . .''

determines to be using a controlled substance, or whose pattern of illegal use of a controlled substance or pattern of alcohol abuse would interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents of the development. The Extension Act states that in determining whether a person's use of a controlled substance or pattern of alcohol abuse may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents of the development, the PHA administering the program may consider whether an applicant has been rehabilitated from drug or alcohol abuse. In addition, the Extension Act provides PHAs the opportunity to access criminal conviction records from law enforcement agencies for public housing applicants and residents. It also requires that the public housing agency provide the tenant or applicant with a copy of the criminal record and an opportunity to dispute the accuracy and relevance of that record before an adverse action is taken on the basis of that criminal record.

c. Quality Housing and Work Responsibility Act of 1998

In 1998, Sections 575–579 of the Quality Housing and Work Responsibility Act (Pub. L. 105–276, approved Oct. 21, 1998, 112 Stat. 2634–2643) (QHWRA) revised sections 6 and 16 of the 1937 Act and created statutory authority to expand the drug abuse and criminal activity requirements already applicable to public housing to most federally assisted housing. Sections 42 U.S.C. 13661–63 apply to all federally assisted housing; they contain provisions applicable to illegal drug use, alcohol abuse, individuals who are subject to a lifetime registration requirement under a State sex offender registration program, and other criminal activity.

QHWRA expanded the prohibition on admitting families for three years because of eviction from public housing or Section 8 units for drug-related criminal activity to cover admissions to (and evictions from) Section 202, Section 811, Section 221(d)(3) BMIR, Section 236, and Section 514/515 rural housing projects. In addition, QHWRA (section 578(a)) added the obligation for project owners—including PHAs that administer public housing—to deny admission to sex offenders who are subject to a lifetime registration requirement under a State sex offender registration program.

d. Related Rulemaking

HUD issued a variety of guidance on implementing the Extension Act (PIH Notice 96–16, issued April 12, 1996, and PIH Notice 96–27, issued May 15, 1996) and published proposed rules for the Section 8 tenant-based and moderate rehabilitation programs on March 31, 1997 (62 FR 15346) and for the public housing program on May 9, 1997 (62 FR 25728).

Because of the timing of the 1998 Act and the related nature of its drug abuse and criminal activity requirements, HUD published a proposed rule (64 FR 40262; July 23, 1999) on the provisions as they existed after the revision to the drug abuse and criminal activity requirements made by QHWRA, rather than issuing a final rule on the admission and eviction provisions of the earlier Extension Act.[10] HUD published its Final Rule implementing the relevant provisions of both the Extension Act and QHWRA on May 24, 2001.[11]

B. HUD's Post-Rulemaking Efforts With Respect to Criminal Histories

In the 20-plus years since the publication of the final rule implementing statutory drug abuse and criminal activity provisions, HUD's experience has been that some PHAs and HUD-assisted housing owners are unnecessarily restrictive in their use of criminal records background screening in their tenant selection practices. This may be partly due to mistaken beliefs that HUD still advocates use of ''One Strike'' admissions policies, as it did in the 1990s.[12] Rather than viewing criminal records as just one part of what should be an individualized determination of whether prospective tenants are likely to engage in future criminal activity that may endanger the health and safety of others, many have used ''blanket bans'' to turn away prospective tenants with any criminal records, no matter how far in the past that criminal justice system involvement was and its relation, if any, to the applicant's current fitness as a tenant based upon public safety, public health, and right to peaceful enjoyment concerns.[13] Some owners and PHAs, especially in recent years, have begun taking an individualized approach to tenant screening. Others, however, consider the mere presence of certain convictions or criminal records automatic grounds for denial, without regard to how far in the past that criminal justice system involvement may have occurred, the type of criminal history involvement and the circumstances surrounding it, including any mitigating factors, such as a subsequent record of rehabilitation. As a result, subsidized housing opportunities are denied to a group of people that need them the most and whom research demonstrates can most benefit from them to reduce the risk of homelessness and recidivism. In this

[10] The FY 1999 appropriations act (section 428 of Pub. L. 105–276, 112 Stat. 2511) added a new paragraph (f) to section 16 of the 1937 Act to bar persons convicted of manufacturing or producing methamphetamine on the premises of federally-assisted housing from public housing and Section 8-assisted housing where the PHA determines who is admitted.

[11] *Screening and Eviction for Drug Abuse and Other Criminal Activity* (66 FR 28775; May 24, 2001). An additional relevant provision was added to the 1937 Act by the Personal Responsibility and Work Opportunity Act of 1996 (Pub. L. 104–193, approved August 22, 1996; 110 Stat. 2105, 2348). Section 903 of that Act amended the 1937 Act (42 U.S.C. 1437f(d)(1) and 1437d(l)) to add as grounds for termination of tenancy in the public housing and Section 8 assistance programs fleeing to avoid prosecution, or custody or confinement after conviction, for a felony (or a high misdemeanor in New Jersey). Violating a condition of probation or parole imposed under Federal or State law is also grounds for termination of tenancy under that provision. That provision also created the obligation (in a new section 27 of the 1937 Act) for PHAs to provide Federal, State or local law enforcement officials with information concerning assisted recipients whom the officials are pursuing for violating parole or fleeing to avoid prosecution. These provisions are not affected by this proposed rule.

[12] On March 28, 1996, President Clinton announced a ''One Strike and You're Out'' policy for public housing residents and signed into law the ''Housing Opportunity Program Extension Act of 1996,'' providing additional authority to PHAs in the areas of screening, lease enforcement, and eviction with the aim of reducing crime in public housing. In Notice PIH 96–16, HUD recommended that PHAs adopt ''One Strike'' policies with stricter screening at admissions and lease provisions that offered ''zero tolerance'' for public housing residents who engage in criminal activity. Available at *https://www.hud.gov/program_offices/administration/hudclips/notices/pih/96pihnotices.*

[13] Blanket ban policies are presumptively inconsistent with current HUD regulations, and HUD's proposed changes should not be construed to indicate otherwise. For example, when making a discretionary (or ''permissive'') admission denial to the voucher program, a PHA must show that the criminal activity falls within specific categories listed in HUD's regulations. Specifically, the criminal activity must be current or have happened a reasonable time before the admission decision, and must be either drug-related, violent, or criminal activity that may threaten the health, safety, or right to peaceful enjoyment of others (*i.e.,* other residents, persons residing in the immediate vicinity, the owner, property management staff, or persons performing a contract administration function or responsibility on behalf of the PHA. 24 CFR 982.553(a)(2)(ii)(A)(1)–(4). *See Hartman* v. *Hous. Auth. of Cnty. of Lawrence,* No. 164 C.D. 2021, 2023 WL 7218096, at *4 (Pa. Commw. Ct. Nov. 2, 2023)(unpublished)(upholding trial court's opinion that the PHA exceeded its authority under HUD regulations and abused its discretion when it denied admission to the Section 8 voucher program based on a charge of welfare fraud, with no evidence that such activity threatened the health, safety, or right to peaceful enjoyment of others).

regard, the Department notes that there are only two statutorily required exclusions for federally assisted housing: persons who are subject to a lifetime registration requirement under a State sex offender registration program and persons convicted of producing methamphetamines on federally assisted property.[14] Other than these two statutorily required exclusions, PHAs and HUD-assisted housing owners are not statutorily required to deny housing assistance to people with prior criminal convictions.

In addition to admissions, similar patterns exist in the eviction and termination context notwithstanding regulatory provisions and judicial precedent that should restrain PHAs and assisted housing providers. For example, in situations where PHAs and assisted owners are granted discretion to evict or terminate for criminal activity, some have failed to exercise such discretion in a thoughtful, analytical manner and have instead engaged in automatic eviction and termination of tenants and participants simply because some criminal activity occurred or was alleged to have occurred, with no consideration of relevant mitigating circumstances outlined in the current regulations. This has led to unnecessary evictions and homelessness, including of vulnerable individuals and families who pose no danger to others. HUD notes that engaging in automatic evictions and terminations where regulations grant PHAs or owners discretion is contrary to the regulations currently in place. Courts have adopted the view that HUD's eviction and termination regulations already require PHAs and owners to consider relevant mitigating circumstances prior to an eviction or termination, and HUD agrees with this view.[15] This proposed rule is intended to be consistent with existing law and does not intend to suggest that a lesser degree of consideration for mitigating circumstances should be given in evictions or terminations than in admissions. HUD specifically seeks comment on whether the language of the proposed rule makes clear and effective the necessity to consider relevant mitigating circumstances prior to eviction or termination (*see* ''Questions for public comment,'' *infra,* Section VII, #4).

HUD is committed to ensuring that PHAs and owners retain the ability to make admission and termination decisions to protect the peaceful enjoyment of all residents and employees at their properties. At the same time, HUD seeks to ensure that its grantees make those decisions consistent with a growing body of case law, evidence, and best practices. PHAs and assisted housing owners should have clarity about their obligations so they can have clear, predictable processes for screening prospective residents. Effective applicant screening entails more than simply reviewing an applicant's criminal record, since having a criminal record in and of itself is not a reliable indicator that an individual is unsuitable for tenancy in HUD-assisted housing. For the same reason, PHAs and owners must consider all relevant mitigating circumstances when making termination and eviction decisions, rather than basing such decisions solely on a tenant's criminal record.

HUD-assisted properties benefit from having long-term residents who pay their portion of the rent and do not interfere with the peaceful and quiet enjoyment of other residents. HUD believes that the type of screening being proposed in this rule, which aims to determine whether people are able to comply with lease terms, would ensure that selected residents meet those resident criteria. It would further ensure fewer inappropriate denials are made, avoiding the time and expense of re-reviews or defending challenges.

1. HUD Guidance and Secretarial Letters

For two decades, HUD has issued letters and guidance in an attempt to encourage PHAs and owners of HUD-assisted housing to reconsider and revise unnecessarily restrictive criminal record screening and eviction policies. In April 2002, former HUD Secretary Mel Martinez urged PHAs to use the public housing lease provision that allows for eviction based on certain criminal activity (often referred to as the ''one strike'' lease provision) only as ''the last option explored, after all others have been exhausted,'' and a ''tool of last resort'' in cases involving the use of illegal drugs.[16] In June 2011, former HUD Secretary Shaun Donovan issued a letter to PHAs across the country, emphasizing the importance of providing ''second chances'' for formerly incarcerated individuals.[17]

[14] There are two ''qualified'' (*i.e.,* not absolute) exclusions: (1) a PHA must prohibit admission for three years from date of eviction if a household member has been evicted from federally assisted housing for drug-related criminal activity (the PHA may admit if the PHA determines the member successfully completed a supervised drug rehabilitation program approved by the PHA, or the circumstances leading to the eviction no longer exist) and (2) a PHA must prohibit admission of households with a member who: (a) the PHA determines is currently engaging in illegal use of a drug, or (b) the PHA determines that it has reasonable cause to believe that a household member's illegal drug use, pattern of illegal drug use, abuse of alcohol, or pattern of abuse of alcohol may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.

[15] *See, e.g., E. Carolina Reg'l Housing Authority* v. *Lofton,* 789 S.E.2d 449, 451 (N.C. 2016) (PHAs attempt to evict tenant and her family for her babysitter committing marijuana offenses in her unit ''failed to exercise its discretion'' under 24 CFR 966.4(l)(5)(vii)); *City of Charleston Hous. Auth.* v. *Brown,* 878 S.E.2d 913, 920 (S.C. Ct. App. 2022) (reversing an eviction because there was no evidence that the PHA properly exercised its discretion by considering mitigating factors as required by § 966.4(l)(5)(vii)); *Carter* v. *Lynn Hous. Auth.,* 880 N.E.2d 778, 785 (Mass. 2008) (reversing termination of voucher where hearing officer failed to consider mitigating circumstances required by 24 CFR 982.552(c)(2), noting that ''failure to exercise discretion is itself an abuse of discretion''); *Oakwood Plaza Apts.* v. *Smith,* 800 A.2d 265, 270 (N.J. Super. Ct. App. Div. 2002) (holding that 24 CFR 982.310(h), ''involve[s] [t]he same degree of discretion'' as in public housing evictions, and ''the federal statutory framework therefore does not permit a Section 8 landlord to act in an arbitrary or capricious fashion.''). HUD is unaware of any judicial precedent interpreting HUD regulations as making the consideration of relevant mitigating circumstances optional in the eviction context; indeed at least one circuit court decision interprets the statutory language underlying these regulations as requiring a consideration of relevant circumstances. *Campbell* v. *Minneapolis Pub. Hous. Auth. ex rel. City of Minneapolis,* 168 F.3d 1069, 1076 (8th Cir. 1999). However, HUD is aware of a split in court decisions on this issue in the voucher termination context. HUD agrees with those decisions which read the voucher termination regulations as requiring the consideration of mitigating circumstances, in line with the majority of case law on these issues. *See, e.g. Lynn Hous. Auth.,* 880 N.E.2d at 785; *Lipscomb* v. *Hous. Auth. of Cnty. of Cook,* 45 N.E.3d 1138, 1147 (Ill. Ct. App. 2015) (a discretionary termination of benefits under 24 CFR 982.552(c) requires the agency to consider the ''relevant circumstances'' before making its determination); *Matter of Gist* v. *Mulligan,* 886 N.Y.S.2d 172, 173 (App. Div. 2009) (finding the PHA's decision to terminate a tenant's voucher was an abuse of discretion based on the circumstances in the case, even though the participant violated the program rules); *Blitzman* v. *Mich. State Hous. Dev. Auth.,* Nos. 330184; 334484, 2017 WL 3044129, at *5–7 (Mich. Ct. App. Jul. 18, 2017) (unpublished) (holding that, although ''may consider'' is usually permissive language, in the context here, it becomes a command to consider mitigating circumstances); *Hicks* v. *Dakota Cnty. Comm. Dev. Agency,* No. A06–1302, 2007 WL 2416872, at *4 (Minn. Ct. App. Aug. 28, 2007) (unpublished) (the PHA must consider the mitigating circumstance in the case at hand, even though the regulation used the permissive term ''may'') *compare to Peterson* v. *Washington Cnty. Hous. & Redevelopment Auth.,* 805 N.W.2d 558, 563–64 (Minn. Ct. App. 2011) (a hearing officer is not required to consider mitigating factors when deciding whether a participant's violation of a reporting rule is a terminable offense); *Bowman* v. *City of Des Moines Mun. Hous. Agency,* 805 N.W.2d 790, 799 (Iowa 2011) (the words ''may consider'' in § 982.552(c)(2)(i) give the hearing officer discretion about whether to consider mitigating factors).

[16] Letter from Mel Martinez to Public Housing Authority Executive Directors (April 16, 2002), available at *https://www.nhlp.org/wp-content/uploads/Ltr-from-Mel-Martinez-HUD-Secy-to-Pub-Hous-Dirs-Apr.-16-2002-1.pdf.*

[17] Letter from Shaun Donovan to Public Housing Authority Executive Directors (June 17, 2011), available at *https://perma.cc/L5QM-MSMX.*

Secretary Donovan urged PHAs to adopt admission policies that achieve a sensible and effective balance between allowing individuals with a criminal record to access HUD-subsidized housing and ensuring the safety of all residents of such housing. A year later, Secretary Donovan encouraged owners of HUD-assisted multifamily properties (''owners'') to do the same,[18] noting that ''people who have paid their debt to society deserve the opportunity to become productive citizens and caring parents, to set the past aside and embrace the future.'' He also reiterated HUD's goal of ''helping ex-offenders gain access to one of the most fundamental building blocks of a stable life—a place to live.''

In 2013, HUD again noted the troubling relationship between housing barriers for individuals with criminal records and homelessness. In PIH Notice 2013–15,[19] which focused on housing individuals and families experiencing homelessness, HUD stated ''the difficulties in reintegrating into the community increase the risk of homelessness for released prisoners, and homelessness in turn increases the risk of subsequent re-incarceration.'' The notice reminded PHAs of the very limited circumstances under which exclusion related to criminal activity is mandated by statute and exhorted PHAs to consider amending their discretionary admissions and occupancy policies to be more inclusive of vulnerable populations who may have criminal backgrounds or histories of incarceration.

In November 2015, HUD went on to issue more comprehensive guidance to both PHAs and assisted housing owners on the proper use of criminal records in housing decisions.[20] The guidance made clear, among other things, that arrest records may not be the basis for denying admission, terminating assistance, or evicting tenants; that HUD does not require the adoption of ''One Strike'' policies; and that PHAs and assisted housing owners must be cognizant of their obligation to safeguard the due process rights of both applicants and tenants. The Notice also explicitly reminds PHAs and owners of their obligation to ensure that all admissions and occupancy requirements comply with applicable civil rights requirements contained in the Fair Housing Act, Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, Titles II and III of the Americans with Disabilities Act of 1990, and all other equal opportunity provisions listed in 24 CFR 5.105.

With respect particularly to ''One Strike'' policies, HUD stated that PHAs and owners are not required to adopt or enforce rules that deny admission to anyone with a criminal record or that require automatic eviction any time a household member engages in criminal activity in violation of their lease. Rather, in most cases, PHAs and owners may exercise discretion in these situations, and in exercising such discretion they may consider all of the circumstances relevant to the particular admission or eviction decision. Additionally, when specifically considering whether to deny admission or terminate assistance or tenancy because of illegal drug use by a household member who is no longer engaged in such activity, a PHA or owner may consider whether the household member is participating in or has successfully completed a substance use rehabilitation program or has otherwise been rehabilitated successfully.

HUD followed this up with guidance from the Office of General Counsel (OGC) in 2016 that clarified that housing providers who use overbroad criminal record exclusions risk violating the Fair Housing Act.[21] HUD's Office of General Counsel advised that in order to avoid such risk, screening policies based on criminal records should be narrowly tailored to exclude only to the extent necessary to achieve a substantial interest. To meet this standard, housing providers should make an individualized assessment that takes into account relevant mitigating information beyond that contained in an individual's criminal record before making any adverse decision based on criminal activity. HUD's Office of General Counsel instructed that this individualized assessment should consider factors such as the facts or circumstances surrounding the criminal conduct; the age of the individual at the time of the conduct; evidence that the individual has maintained a good tenant history before and/or after the conviction or conduct; and evidence of rehabilitation.

The guidance also clarified that housing providers must be able to prove through reliable evidence that their policies actually assist in protecting resident safety and peaceful enjoyment; therefore, they should not exclude individuals because of one or more prior arrests (without any conviction), impose ''blanket bans'' that exclude anyone with a conviction record or even certain types of convictions, or utilize policies that fail to distinguish between criminal conduct that indicates a demonstrable risk to resident safety and/or property and criminal conduct that does not. While this OGC guidance was not directed specifically to PHAs or HUD-assisted housing providers, it applies to them as it does to all other entities who engage in actions covered by the Fair Housing Act.[22]

On June 23, 2021, HUD Secretary Marcia Fudge issued a letter to PHAs, Continuums of Care, Multifamily Owners, and HUD Grantees,[23] reiterating the theme of HUD's earlier secretarial-issued letters and clarifying that people exiting prisons and jails who are at-risk of homelessness due to their low incomes and lack of sufficient resources or social supports are among the eligible populations for Emergency Housing Vouchers under the American Rescue Plan. Secretary Fudge's letter also emphasizes HUD's commitment to taking a comprehensive approach to addressing reentry housing needs, including developing tools and guidance to ensure that applicant screening and tenant selection practices avoid unnecessarily overbroad denial of housing to applicants on the basis of criminal records; reviewing existing HUD policies and regulations that limit access to housing and HUD assistance among those with criminal histories; and publishing findings regarding the best practices on reentry housing programs.[24] Following the June letter,

[18] Letter from Shaun Donovan to Assisted Housing Owners (March 14, 2012). *https://nhlp.org/files/HUD%20Letter%203.14.12.pdf.*

[19] *Guidance on housing individuals and families experiencing homelessness though the Public Housing and Housing Choice Voucher programs,* HUD PIH Notice 2013–15 (HA), (June 10, 2013), available at *https://www.hud.gov/sites/documents/PIH2013-15.PDF.*

[20] *Guidance for Public Housing Agencies (PHAs) and Owners of Federally-Assisted Housing on Excluding the Use of Arrest Records in Housing Decisions,* PIH Notice 2015–19 (November 2, 2015), available at *https://www.hud.gov/sites/documents/PIH2015-19.PDF* (Identical guidance was issued at the same time by HUD's Office of Housing as Housing Notice 2015–10).

[21] *See* fn.1 *supra.*

[22] *Id.* at 3 (clarifying that the 2016 Guidance ''applies to a wide-range of entities covered by the Act, including private landlords, management companies, condominium associations or cooperatives, third-party screening companies, HUD-subsidized housing providers, and public entities that operate, administer or fund housing or that enact ordinances that restrict access to housing based on criminal involvement''), *https://www.hud.gov/sites/dfiles/FHEO/documents/Implementation%20of%20OGC%20Guidance%20on%20Application%20of%20FHA%20Standards%20to%20the%20Use%20of%20Criminal%20Records%20-%20June%2010%202022.pdf.*

[23] Letter from Marcia L. Fudge to Public Housing Authorities, Continuums of Care, Multifamily Owners, and HUD Grantees (June 23, 2021), *https://www.hud.gov/sites/dfiles/PA/documents/SOHUD_reentry_housing_letter.pdf.*

[24] *Id.*

HUD held a series of listening sessions with stakeholders, housing residents, and people with lived experience of criminal justice system involvement and learned that there continue to be numerous instances of people being denied HUD program access for years-old criminal convictions or convictions that do not pose a current risk or threat.

Partially as a result of those listening sessions, in April 2022, Secretary Fudge issued an internal directive to principal staff to conduct an agency-wide review of all existing regulations, guidance, and subregulatory policy documents and to propose amendments that will reduce barriers to housing for persons with criminal histories and their families and make HUD programs as inclusive as possible. This review identified opportunities to apply to HUD programs' core principles informed by evidence-based research, *e.g.,* that criminal records should not be taken as indicating that the person is engaged in or at-risk of engaging in current or future criminal activity or used in an overbroad manner to deny access to HUD-assisted housing; that stable housing reduces recidivism and increases public safety; and that overly broad exclusions of people with criminal records do not increase public safety.[25] This proposed rule would implement many of the changes that were proposed as part of that review effort.

2. Interagency Coordination Efforts

HUD has been involved since 2011 in various coordinated intergovernmental efforts to address larger issues of reentry of formerly incarcerated individuals, as part of both the Federal Interagency Reentry Council (FIRC) and the more recently convened Reentry Coordination Council (RCC).

In January 2011, then U.S. Attorney General Eric Holder established the Cabinet-level FIRC, representing a significant executive branch commitment to coordinating reentry efforts and advancing effective reentry policies. From 2011 to 2016, HUD worked with more than 20 other federal agencies to reduce recidivism and improve housing, employment, education, health, and child welfare outcomes. Following up on the work of the FIRC, in October 2021 U.S. Attorney General Merrick Garland convened the federal Reentry Coordination Council (RCC). The creation of the RCC—which largely mirrors the work of its FIRC predecessor, but with an added focus on the impacts of COVID—stems from the First Step Act of 2018 (section 505 of Pub. L. 115–391), which reauthorized the Second Chance Act and requires the Attorney General to ''coordinate on Federal programs, policies, and activities relating to the reentry of individuals returning from incarceration to the community, with an emphasis on evidence-based practices'' and to ''submit to Congress a report summarizing the achievements'' of the agency collaboration, including ''recommendations for Congress that would further reduce barriers to successful reentry.'' The RCC is composed of representatives from six federal agencies in addition to the Department of Justice; it issued its first report in April 2022.[26]

In May 2022, President Biden issued Executive Order 14074,[27] which, among other things, mandated the establishment of an interagency Alternatives and Reentry Committee, with HUD as an enumerated member, to develop a comprehensive evidence-based federal strategic plan to improve public safety while safely reducing federal strategy to reduce unnecessary criminal justice interactions, to support and improve rehabilitation while people are incarcerated, and to facilitate and support successful reentry. One of the specific charges of that committee is to identify ways to reduce barriers to federal programs, including housing programs, for individuals with criminal records.[28] The White House Alternatives, Rehabilitation, and Reentry Strategic Plan mandated by the Executive Order was published on April 28, 2023.[29]

3. HUD's Engagement of Stakeholders and People With Lived Experience of Criminal Justice System Involvement

Prior to and after the Secretary's internal directive to conduct a comprehensive internal review of HUD policy and guidance regarding the use of criminal records in housing decisions, HUD staff engaged in extensive conversations with a variety of stakeholders on these issues. In particular, HUD staff has held multiple listening sessions that included representatives of public housing agencies, HUD-assisted housing providers, community organizers, legal services organizations, providers of reentry services and other services for formerly incarcerated people, as well as formerly incarcerated individuals and other people with criminal records. HUD held three such sessions in early April 2022 that were attended by over 100 people. Although they were invited to all three sessions, HUD held one of these three sessions exclusively for formerly incarcerated people and others who have been involved in the criminal justice system. The listening sessions revealed several independent insights, including:

- There is wide variation among HUD-assisted housing providers in their use of criminal records in screening, admission, and tenancy policies.
- Following HUD's issuance of fair housing guidance from the Office of the General Counsel, some public housing agencies and HUD-assisted housing providers proactively made changes in their use of criminal records, such as limiting ''lookback'' periods, limiting their review to only a certain set of convictions, and also reviewing mitigating factors as part of an individualized assessment.
- Many other HUD-assisted housing providers appear to be unaware of the 2016 guidance from HUD's Office of General Counsel or expressed uncertainty regarding how to apply fair housing principles. Some expressed concern that the fair housing guidance applicable to all housing providers was difficult to reconcile with HUD program regulations and sub-regulatory guidance materials.
- Many people continue to be denied access to HUD housing assistance programs for criminal records that appeared to indicate little risk to the health, safety, welfare, and peaceful enjoyment of housing by other residents.
- Owners and PHAs who provide HUD-assisted housing would like clear guidance on how to screen applicants appropriately.

The information gathered from these listening sessions helped inform the Secretary's decision to mandate a comprehensive review, as well as this proposed rulemaking.

III. Need for the Regulation

In addition to creating clarity and standardizing variegated admission and termination practices regarding individuals with criminal records across

[25] U.S. Dept. of Housing and Urban Development, *Why Housing Matters for Successful Reentry and Public Safety,* THE EDGE, (Apr. 19, 2022), *https://www.huduser.gov/portal/pdredge/pdr-edge-frm-asst-sec-041922.html.*

[26] *Coordination to Reduce Barriers to Reentry: lessons learned from COVID–19 and beyond* (April 2022), available at *https://www.justice.gov/opa/press-release/file/1497911/download.*

[27] E.O. 14074 *Advancing Effective, Accountable Policing and Criminal Justice Practices To Enhance Public Trust and Public Safety* (May 25, 2022).

[28] *Id.*

[29] *https://www.whitehouse.gov/briefing-room/statements-releases/2023/04/28/fact-sheet-biden-harris-administration-takes-action-during-second-chance-month-to-strengthen-public-safety-improve-rehabilitation-in-jails-and-prisons-and-support-successful-reentry/.*

the country, the proposed rule is needed to address several discrete issues.

A. Prevalence of Criminal Justice System Involvement in General Population

In a typical year, approximately 600,000 people in the United States enter prisons; at the same time, people are sent to jails across our country over 10 million times.[30] Individuals returning to their communities after a term of imprisonment face a number of barriers to success, including housing insecurity, inability to access health care, food insecurity, and barriers to education and employment. These longstanding barriers were exacerbated during the COVID–19 pandemic and compounded by additional hurdles, including limited access to government and community-based services and support.[31]

The criminal justice system affects a large segment of the U.S. population. The U.S. population has less than 5% of the world's population but represents over 20% of the world's prisoners. Between 70 million and 100 million—or as many as one in three Americans—have a criminal record.[32] Approximately 5.5 million people in the United States—1 in 48 adult U.S. residents—were under the supervision of adult correctional systems at the end of 2021,[33] and as many as one in three adult Americans has been arrested at least once.[34] In 2021, nearly 445,000 people were released from prison.[35] Individuals in prison and jail are disproportionately poor compared to the overall U.S. population.[36] The impact of this mass incarceration is disproportionate, with historically marginalized groups being most impacted. Moreover, people of color are overrepresented in the nation's prisons and jails: for instance, Black Americans make up thirty-eight percent of the incarcerated population despite representing only twelve percent of the U.S. population. Black men are incarcerated at nearly six times the rate of White men. Black men with disabilities account for less than 2% of the overall U.S. population but more than 18% of the state prison population. Hispanic men are incarcerated at nearly two-and-a-half times the rate of White men. Native Americans overall are incarcerated at more than twice the rate of White Americans.[37]

The nation as a whole faces a severe shortage of affordable housing and rental assistance relative to need; federal housing assistance is not an entitlement and serves only one in five eligible renter households.[38] However, certain populations, including those with criminal justice system involvement, face even greater challenges with obtaining and maintaining housing and housing assistance. The shortage of affordable housing during the COVID–19 pandemic placed persons with criminal histories and with limited or no credit histories (which is often a byproduct of incarceration) at a particular disadvantage. In some jurisdictions, the lack of safe, stable housing also delayed approval for discretionary early or compassionate release from prison, leading those without housing to serve more time behind bars than those with stable housing available to them.[39] Even fewer housing options are affordable and accessible for individuals with disabilities, making it more difficult for these individuals to successfully transition back home from jail or prison.

Even prior to the pandemic, formerly incarcerated people were almost ten times more likely to experience homelessness than the general public. The rates are significantly higher among those released from incarceration within the prior two years. Using HUD Point-in-Time estimates and the National Former Prisoner Survey, academic Lucius Couloute[40] estimates that the sheltered homeless rate is 98 per 10,000 for formerly incarcerated individuals compared to 13 per 10,000 for the general public. The unsheltered homeless rate is 105 per 10,000 for formerly incarcerated individuals compared to 8 per 10,000 in the general public. An additional 367 per 10,000 formerly incarcerated individuals have marginal housing insecurities, living in rooming houses, hotels, or motels. Moreover, studies have calculated that a person experiencing chronic homelessness can cost taxpayers between $30,000 and $100,000 per year.[41]

[30] Wendy Sawyer & Peter Wagner, *Mass Incarceration: The Whole Pie 2022,* PRISON POLICY INITIATIVE (Mar. 14, 2023), *https://www.prisonpolicy.org/reports/pie2023.html.* During the pandemic the American correctional system experienced a 20 percent reduction in the prison population and a 25 percent reduction in the jail population. This is largely due to the ''pandemic-related slowdowns in the criminal justice system.''

[31] See Ripper, B. (2023). Flyers, fighters, and freezers: how formerly incarcerated women coped with reentry and the job search during the COVID–19 pandemic. *Journal of Offender Rehabilitation, 62*(3), 137–156 and Kramer, C., Song, M., Sufrin, C.B., Eber, G.B., Rubenstein, L.S., & Saloner, B. (2023). Release, Reentry, and Reintegration During COVID–19: Perspectives of Individuals Recently Released from the Federal Bureau of Prisons. *Health Equity, 7*(1), 384–394.

[32] Sent'g Proj., *Americans with Criminal Records* (Aug. 2022), *https://www.sentencingproject.org/app/uploads/2022/08/Americans-with-Criminal-RecordsPoverty-and-Opportunity-Profile.pdf.*

[33] Carson, E. Ann and Kluckow, Rich. (February 2023). Correctional Population in the United States, 2021—Statistical Tables. Bureau of Justice Statistics. In 2019, an estimated 6.3 million people in the United States (1 in 40) were under the supervision of the adult correctional system. During the first year of the pandemic in 2020, the number dropped by 11 percent to 5.5 million—a level not observed in nearly 25 years. (Minton, Beatty, and Zeng, 2021; Kluckow and Zeng, 2022). The decrease between year 1 and 2 of the pandemic was only 1 percent. (Carson and Kluckow, 2023)

[34] *See* Lucius Couloute, *Nowhere to Go: Homelessness among formerly incarcerated people,* PRISON POLICY INITIATIVE (Aug. 2018), *https://www.prisonpolicy.org/reports/housing.html;* Shawn Bushway et. al., *Barred from employment: More than half of unemployed men in their 30s had a criminal history of arrest,* 8 Science Advances No. 7 (Feb. 18, 2022), *https://www.science.org/doi/10.1126/sciadv.abj6992.*

[35] Carson, E. Ann (December 2022). Prisoners in 2021—Statistical Tables. Bureau of Justice Statistics.

[36] Sawyer & Wagner, *supra* fn.30.

[37] *Id. Since the writing of the article, the U.S. Census Bureau reported the percent Americans reporting race as ''Black or African American alone'' increased to 13.6 percent.*

[38] Corianne Payton Scally, *et al., The Case for More, Not Less: Shortfalls in Federal Housing Assistance and Gaps in Evidence for Proposed Policy Changes,* URBAN INST., at 1, (Jan. 2018), *https://www.urban.org/sites/default/files/publiction/95616/case_for_more_not_less.pdf;* G. Thomas Kingsley, *Trends in Housing Problems and Federal Housing Assistance,* URBAN INST., (Oct. 2017), *https://www.urban.org/sites/default/files/publication/94146/trends-in-housing-problems-and-federal-housing-assistance.pdf.*

[39] Letter from Marcia L. Fudge, Secretary, U.S. Dept. of Housing and Urban Development, *supra* at fn 23.

[40] *See* U.S. Dept. of Justice, Bureau of Justice Statistics, Correctional Populations in the United States, 2020—Statistical Tables (Mar. 2022), *https://bjs.ojp.gov/content/pub/pdf/cpus20st.pdf;* Lucius Couloute, *Nowhere to Go: Homelessness among formerly incarcerated people,* Prison Policy Initiative (Aug. 2018), *https://www.prisonpolicy.org/reports/housing.html;* Shawn Bushway et. al., *Barred from employment: More than half of unemployed men in their 30s had a criminal history of arrest,* 8 Science Advances No. 7 (Feb. 18, 2022), *https://www.science.org/doi/10.1126/sciadv.abj6992; see also* Saneta deVuono-powell, et al., *Who Pays? The True Cost of Incarceration on Families,* Ella Baker Center, Forward Together, Research Action Design (Sept. 2015), at 26–27, *https://www.whopaysreport.org/wp-content/uploads/2015/09/Who-Pays-FINAL.pdf* (stating that in one study, 79 percent of survey respondents reported being ineligible for or denied housing due to their criminal conviction history or that of a family member).

[41] *See* National Alliance to End Homelessness, *Ending Chronic Homelessness Saves Taxpayers Money* (June 2017), *http://endhomelessness.org/wp-content/uploads/2017/06/Cost-Savings-from-PSH.pdf* (''A chronically homeless person costs the tax payer an average of $35,578 per year''); United States Interagency Council on Homelessness, *Ending Chronic Homelessness in 2017* (2017), *https://www.usich.gov/resources/uploads/asset_library/Ending_Chronic_Homelessness_in_2017.pdf* (''Some studies have found that leaving a person to remain chronically homeless costs taxpayers as much as $30,000 to $50,000 per year); *What is the Cost of Homelessness?,* Father Joe's Villages (Mar. 8, 2022), *https://my.neighbor.org/what-is-the-cost-of-homelessness/* (describing how top homeless users of public services in San Diego cost tax payers nearly an average of $111,000 per year); Malcolm

The nexus between criminal justice system involvement and homelessness is clear. Those who have been incarcerated once are seven times more likely to experience homelessness than the general population; this rises to thirteen times more likely for those arrested more than once.[42] Moreover, research shows that the lack of stable housing following incarceration leads to a higher likelihood of rearrest and reincarceration.[43]Additionally, there is a growing body of evidence that shows that the provision of housing assistance, particularly when accompanied with supportive services, can help reduce the risk of recidivism and homelessness and decrease the risk of future involvement in the criminal justice system.[44] Blanket bans and other restrictive criminal records policies and practices affect more than just the individual with a history of criminal activity, but rather they can affect an entire family, *e.g.,* when the criminal history of one member leads to the denial or termination of housing for all members. Studies show that housing instability can have harmful and long-lasting consequences for children,[45] potentially affecting a child's educational outcomes, access to medical care, food security, and health outcomes.[46]

B. Inaccuracy of Arrest Record as an Indicator of Criminal Activity

Subject to limitations imposed by program rules, the Fair Housing Act, and other civil rights requirements, PHAs and owners generally retain discretion in setting admission, termination of assistance, and eviction policies for their programs and properties. Even so, such policies must ensure that adverse housing decisions based upon criminal activity are supported by sufficient evidence that the individual engaged in such activity.

This proposed rule would establish by regulation existing HUD guidance that an arrest cannot be the sole basis for a determination that an individual engaged in criminal activity. The mere fact that an individual has been arrested does not, in and of itself, constitute evidence that he or she has engaged in criminal activity. Accordingly, the fact that there has been an arrest for a crime may not be used as the sole basis for the requisite determination that the relevant individual engaged in criminal activity warranting denial of admission, termination of assistance, or eviction.

An arrest shows nothing more than that someone had reason to suspect that the person apprehended committed an offense.[47] In many cases, arrests do not result in criminal charges, and even where they do, such charges can be and often are dismissed or the person is not convicted of the crime alleged. Even where an arrest leads to a charge, one study found that only 53 percent of charges resulted in conviction (43.8 percent among felony counts), whereas 38.7 percent of all charges resulted in non-conviction.[48]

Moreover, arrest records are often inaccurate or incomplete (*e.g.,* by failing to indicate or update the outcome of the arrest or charge records or the dispositions of cases presented to the court),[49] such that reliance on arrests not resulting in conviction as the basis for denying applicants or terminating the assistance or tenancy of a household or household member may result in unwarranted denials of admission to or eviction from federally assisted housing.

For these reasons, HUD has explained, and the Supreme Court has recognized, that ''[t]he mere fact that a man has been arrested has very little, if any, probative value in showing that he has engaged in any misconduct.'' [50] Because arrest records do not constitute proof of past unlawful conduct and are often incomplete, the fact of an arrest is not a reliable basis upon which to assess the potential risk to resident safety or property posed by a particular individual.[51]

Although a record of arrest itself is insufficient to show that an individual engaged in the conduct at question, the conduct underlying an arrest—where reliable records of that conduct exist—may indicate that the individual is not suitable for tenancy. The conduct, not the arrest, is what is relevant for admissions and tenancy decisions. A housing provider still must have reliable evidence that the alleged conduct reflected in the arrest actually occurred in order to deny housing on that basis.[52]

Gladwell, *Million Dollar Murray,* New Yorker (February 5, 2006), *https://www.newyorker.com/magazine/2006/02/13/million-dollar-murray* (describing how one man experiencing homelessness and alcohol use disorder used about $1 million dollars in public services over his 10 years of homelessness); Kathleen Miles, *Housing the Homeless Not Only Saves Lives—It's Actually Cheaper Than Doing Nothing,* HuffPost (Mar. 25, 2014), *https://www.huffpost.com/entry/housing-first-homeless-charlotte_n_5022628* (describing study finding that program that housed 85 chronically homeless adults saved $1.8 million in health care costs and reduced emergency room visits and days in the hospital by nearly 80 percent).

[42] *Id.*

[43] *Id.*

[44] *See, e.g.,* Kimberly Burrowes, *Can Housing Interventions Reduce Incarceration and Recidivism?* HOUSING MATTERS (Feb. 27, 2019), *https://housingmatters.urban.org/articles/can-housing-interventions-reduce-incarceration-and-recidivism;* Leah A. Jacobs & Aarton Gottlieb, *The Effect of Housing Circumstances on Recidivism: Evidence from a Sample of People on Probation in San Francisco,* 47 CRIM. JUST. BEHAV. 1097–1115 (Sept. 2020), *ncbi.nlm.nih.gov/pmc/articles/PMC8496894/pdf/nihms-17434785.*

[45] Rebecca Vallas et al., *Removing Barriers to Opportunity for Parents with Criminal Records and their Children,* Center for American Progress (Dec. 2015) at 10, *https://americanprogress.org/wp-content/uploads/2015/12/CriminalRecords-report2.pdf?_ga=2.8340081.214011696.1657129695-2105602745.1657129694.*

[46] *Id.*

[47] *See Schware* v. *Bd of Bar Examiners,* 353 U.S. 232, 241 (1957); *see also United States* v. *Berry,* 553 F.3d 273, 282 (3d Cir. 2009) (''[A] bare arrest record—without more—does not justify an assumption that a defendant has committed other crimes and it therefore cannot support increasing his/her sentence in the absence of adequate proof of criminal activity.''); *United States* v. *Zapete-Garcia,* 447 F.3d 57,60 (1st Cir. 2006) (''[A] mere arrest, especially a lone arrest, is not evidence that the person arrested actually committed any criminal conduct.'').

[48] Chien, Colleen. (2020). America's Paper Prisons: The Second Chance Gap. Michigan Law Review, Volume 119, Issue 3. (computed from charge count and conviction tables in the appendix). According to the paper, the remaining 8.3 percent of charges were disposed of through diversions, deferrals, pending transfers, or the disposition of the case was unknown. *Id.*

[49] Wells, M., Cornwell, E.Y., Barrington, L., Bigler, E., Enayati, H. & Vilhuber, Y. (2020). Criminal Record Inaccuracies and the Impact of Record Education Intervention on Employment-Related Outcomes. U.S. Department of Labor; Ariel Nelson, *Broken Records Redux: How Errors by Criminal Background Check Companies Continue to Harm Consumers Seeking Jobs and Housing,* National Consumer Law Center (Dec. 2019), at 17, *https://www.nclc.org/wp-content/uploads/2022/09/report-broken-records-redux.pdf.*

[50] *Schware,* at 241.

[51] *See, e.g., Conn. Fair Hous. Ctr.* v. *CoreLogic Rental Prop. Sols., LLC,* 478 F. Supp. 3d 259, 300 (D. Conn. 2020); U.S. Dep't of Justice, *The Attorney General's Report on Criminal History Background Checks* at 3, 17 (June 2006), *available at http://www.bjs.gov/content/pub/pdf/ag_bgchecks_report.pdf* (reporting that the FBI's Interstate Identification Index system, which is the national system designed to provide automated criminal record information and ''the most comprehensive single source of criminal history information in the United States,'' is ''still missing final disposition information for approximately 50 percent of its records.'' The DOJ has noted that the disposition rates are slightly higher today, and this statement doesn't encompass National Fingerprint File states that maintain their own criminal history nor differentiate between states and federal agencies.).

[52] Analogously, in the employment context, the Equal Employment Opportunity Commission has explained that barring applicants from employment on the basis of arrests not resulting in conviction is not consistent with business necessity under Title VII because the fact of an arrest does not establish that criminal conduct occurred. *See* U.S. Equal Emp't Opportunity Comm'n, *EEOC Enforcement Guidance, Number 915.002,* 12 (Apr. 25, 2012), *available at http://www.eeoc.gov/laws/guidance/arrest_conviction.cfm; see also Gregory* v. *Litton Systems, Inc.,* 316 F. Supp. 401, 403 (C.D. Cal. 1970) (holding that defendant employer's policy of excluding from employment persons with arrests without convictions unlawfully discriminated against African American applicants in violation of Title VII because there ''was no evidence to support a claim that persons who have suffered no criminal convictions but have been arrested on a number of occasions can be expected, when employed, to perform less efficiently or less

Continued

HUD recognizes that housing providers often lack resources to investigate and adjudicate whether criminal conduct occurred in the absence of a conviction,[53] and that a number of PHAs have faced legal costs and liability for terminating tenants based on their use of unreliable hearsay.[54] HUD seeks comment on whether it should provide further clarification of what evidence may or may not be used to determine that criminal activity occurred for admission, denials, terminations, and evictions, whether in this rule or in subsequent guidance (*see* ''Questions for public comment,'' *infra,* Section VII, #7).

1. Absence of Empirical Evidence That Having a Criminal Record Negatively Affects Success in Tenancy

Although existence of a criminal record is one of the pieces of information used to assess the probability of future criminal reoffending, it has not been routinely studied as a predictor of housing retention.[55] One study of a supportive housing program for individuals with behavioral health conditions experiencing homelessness found that, on average, having criminal history made no difference in the ability to successfully stay housed.[56] Research also shows that over time the likelihood that a person with a prior criminal record will engage in additional criminal conduct decreases until, by six to seven years after the prior offense, it approximates the likelihood that a person with no criminal history will commit an offense.[57]

A study of housing outcomes among tenants participating in an Intervention based on the Housing First model found that successful tenancy by those with a criminal history was similar to that of participants without a criminal history.[58] A national study following nearly 15,000 veterans who were transitioned from homelessness to housing through the HUD–VA Supportive Housing (HUD–VASH) program found that prior incarceration did not impede connection to services or success in obtaining or maintaining housing.[59] A Minnesota study examining the relationship between criminal conviction history and housing outcomes among over 10,000 households found that 11 out of 15 conviction types in resident criminal histories show no evidence of impact on negative housing outcomes.[60] The remaining four conviction types (property offenses, major drug offenses, fraud, and assault) did show an impact on negative housing outcomes, but even they increased the probability of negative housing outcomes by only three to nine percentage points, which decreased over time.[61]

HUD is not aware of any empirical evidence that would justify a blanket exclusion from housing of people with criminal histories or by treating criminal records as *per se* disqualifying without reference to other evidence bearing on fitness for tenancy. Despite this lack of empirical basis, many landlords and housing providers continue to deny housing or housing assistance to people solely or largely based upon their criminal histories. Several studies using paired testers of prospective tenants, some with criminal histories and others without, found significant differences in success in housing admission.[62] One study found that prospective tenants without criminal records were more than twice as likely to have calls returned (96 percent) than those with criminal records (43 percent).[63]

Many public housing agencies and HUD-assisted housing providers recognize that people with criminal records face unnecessary exclusions to housing assistance and barriers to housing. A HUD study of public housing agency efforts to address homelessness found that PHAs commonly identified criminal records as a barrier to assisting people

honestly than other employees,'' such that ''information concerning a . . . record of arrests without conviction, is irrelevant to [an applicant's] suitability or qualification for employment''), *aff'd,* 472 F.2d 631 (9th Cir. 1972).

[53] While a record of conviction will generally serve as sufficient evidence to show that an individual engaged in criminal conduct, even a guilty plea does not conclusively establish the underlying crime. There may be evidence of an error in the record, an outdated record, or another reason for not relying on the evidence of a conviction. For example, a database may continue to report a conviction that was later expunged or pardoned or may continue to report as a felony an offense that was subsequently downgraded to a misdemeanor. *See generally* SEARCH, *Report of the National Task Force on the Commercial Sale of Criminal Justice Record Information* (2005), *available at http://www.search.org/files/pdf/RNTFCSCJRI.pdf. See also Costa* v. *Fall River Hous. Auth.,* 903 NE2d 1098 (Mass. 2009) (noting that ''guilty pleas are not conclusive of the underlying facts, but evidence of them).''

[54] *See, e.g. Woods* v. *Willis,* 825 F. Supp. 2d 893, 901–02 (N.D. Ohio 2011) (finding that a PHA hearing officer erred for terminating Section 8 benefits based solely on hearsay evidence to substantiate fraud allegations); *Costa* v. *Fall River Hous. Auth.,* 903 NE2d 1098, 1108–12 (Mass. 2009) (holding that a housing authority grievance panel could not properly base its decision to terminate Section 8 benefits on ''unattributed, multi-level, and conclusory hearsay evidence'' from a newspaper); *Diaz* v. *Donovan,* 404959/07, 2008 N.Y. Misc. LEXIS 4570, at *7–8 (Sup. Ct. June 25, 2008); *Basco* v. *Machin,* 514 F.3d 1177, 1182–83 (11th Cir. 2008) (hearsay evidence in the form of police reports insufficient to create prima facie case for termination) *overruled on other grounds by Yarbrogh* v. *Decatur Hous. Auth.,* 931, 1322, 1323 (11th Cir. 2019); *Escalera* v. *N.Y.C. Hous. Auth.,* 425 F.2d 853, 862–63 (2d Cir. 1970); *Edgecomb* v. *Hous. Auth. of Town of Vernon,* 824 F. Supp. 312, 315–16 (D. Conn. 1993); *Loving* v. *Brainerd Hous. & Redev. Auth.,* No. 08–1349 (JRT/RLE), 2009 WL 294289, at *6–7 (D. Minn. Feb. 5, 2009); *Chase* v. *Binghamton Hous. Auth.,* 458 N.Y.S.2d 960, 962–63 (App. Div. 1983) (holding that unreliable hearsay statements were not admissible in an administrative hearing to show that the tenant violated her housing agreement); *Knox* v. *Christina,* 465 N.Y.S.2d 203 (App. Div. 1983); *Brown* v. *Winnebago Cty Hous. Auth.,* 10 C 50027, 2010 U.S. Dist. LEXIS 144669, at *3–5 (N.D. Ill Apr. 1, 2010); *Williams* v. *Hous. Auth. of City of Milwaukee,* 779 NW2d 185, 188–90 (Wis. Ct. App. 2009); *Mortle* v. *Milwaukee County,* No. 2007AP166, 2007 WL 4233007 (Wis. Ct. App. Dec. 4, 2007) (unpublished); *Badri* v. *Mobile Hous. Bd.,* No. 11–0328–WS–M, 2011 WL 3665340, at *5 (S.D. Ala. Aug. 22, 2011) (reversing termination based on double hearsay contained in letters); *Sanders* v. *Sellers-Earnest,* 768 F. Supp. 2d 1180, 1185–88 (M.D. Fla. 2010) (reversing termination based on hearsay statement of ex-boyfriend on police report); *Young* v. *Maryville Hous. Auth.,* No. 3:09–CV–37, 2009 WL 2043891, at *7-*8 (E.D. Tenn. July 2, 2009) (reversing termination based on double hearsay in police report); *Willis* v. *Rice Cty. Hous. & Redev. Auth.,* No. A08–1637, 2009 WL 2225983, at *3-*5 (Minn. Ct. App. July 28, 2009) (unpublished).

[55] Daniel K. Malone, 2009. ''Assessing criminal history as a predictor of future housing success for homeless adults with behavioral health disorders,'' Psychiatric Services 60:2, 224–30.

[56] See Malone, D.K. (2009). Assessing criminal history as a predictor of future housing success for homeless adults with behavioral health disorders. *Psychiatric Services, 60*(2), 224–230. The overall housing success rate for continuous residency of at least two years was 72 percent among the 332 individuals in the sample.

[57] *See, e.g., id.* (citing Title VII cases and Megan C. Kurlychek et al., *Scarlet Letters and Recidivism: Does an Old Criminal Record Predict Future Offending,* 5 Criminology and Pub. Pol'y 483 (2006) (reporting that after six or seven years without reoffending, the risk of new offenses by persons with a prior criminal history begins to approximate the risk of new offenses among persons with no criminal record).

[58] *Id.*

[59] Tejani N, Rosenheck R, Tsai J, Kasprow W, McGuire JF. Incarceration histories of homeless veterans and progression through a national supported housing program. Community Ment Health J. 2014 Jul;50(5):514–9. doi: 10.1007/s10597–013–9611–9. Epub 2013 Jun 1. PMID: 23728839.

[60] Cael Warren, *Success in Housing: How much Does a Criminal Background Matter?* Wilder Research, at 15(Jan. 2019), *https://www.wilder.org/sites/default/files/imports/AEON_HousingSuccess_CriminalBackground_Report_1-19.pdf.*

[61] *Id.* Even with this modest impact, the author of this study noted that the data limitations—namely the fact that the author could not control for residents' employment status, education background, disability status, mental health or substance abuse diagnoses, or housing history—led him to question the size and significance of the impact observed. *Id.* at 15, 21.

[62] Douglas N. Evans, Kwan-Lamar Blount-Hill & Michelle A. Cubellis (2019) Examining housing discrimination across race, gender and felony history, Housing Studies, 34:5, 761–778, DOI: 10.1080/02673037.2018.1478069.

[63] Evans, Douglas & Porter, Jeremy. (2014). Criminal history and landlord rental decisions: a New York quasi-experimental study. Journal of Experimental Criminology. 11. 21–42. 10.1007/s11292–014–9217–4.

experiencing homelessness, and, as a result, many modified their screening and admission policies.[64] Through an initiative supported by the U.S. Department of Justice's Bureau of Justice Assistance, twenty-two public housing agencies in twelve states voluntarily amended their screening and admissions policies to limit the scope of the criminal records considered and/or developed programs to increase access for people with criminal records.[65] There is no evidence that indicates that the more tailored consideration of criminal records in screening and admissions by these public housing agencies negatively affected housing outcomes or public safety.

2. Research Demonstrates That Risk of Recidivism and Future Criminal Activity Decreases Significantly Over Time and With Age

Research indicates that a person's prior criminal justice system involvement taken at face value is not a reliable or accurate predictor of their risk to public safety. Moreover, the relationship between a past conviction and the risk of future criminal justice system involvement declines over time and with age. Most people who are released from incarceration never return to prison.[66] Studies have shown that a person with a prior criminal conviction that has not committed a subsequent offense within four to seven years is no more likely to be arrested for a crime than a person in the general population.[67] As time passes, a person's criminal history becomes less likely to determine their risk of future criminal justice system involvement. After a period of time, a person with a criminal history is no more likely to commit another offense than a person of the same age without a criminal history. Specifically, there is little difference in offending likelihood after an individual reaches their mid-20's.

Although 71 percent of state prisoners released from prison were arrested within five years following release, half of these arrests were for public disorder offenses or associated probation/parole violation, failure to appear, obstruction of justice, contempt of court, commercialized vice, and disorderly conduct. Nearly all these offenses would fall into the category of non-criminal technical violations. Research has shown that post-incarceration interventions such as housing, social supports, and community-based programs have repeatedly shown benefit to enrolled individuals, regardless of the severity of their original criminal conduct.[68] Research indicates that recidivism rates drop significantly after three years for all types of offenses.[69]

Of the small percentage of people who do reoffend, the average time from release to the subsequent offense is 18 months. However, it is important to keep in mind whether a person receives supportive services that address their core needs and their environment affects their risk of recidivism.[70] When a person is released to a higher-risk environment, the risk of reoffending increases. Higher-risk environments are characterized by instability, such as a shortage of affordable, accessible, and quality housing; lack of positive social supports; unemployment; and other factors. The risk of recidivism is not the same for every person; assessing the likelihood of reoffending requires consideration of multiple factors and is highly individual and circumstance dependent.

Another factor to consider is age. Researchers have studied the prevalence of offending over the life course. Their studies have shown that crime commission typically peaks in the mid-20s and then drops sharply as a person ages. Most people will no longer commit crimes by their 40s, and desistence from crime overall is the typical outcome.[71] There are a number of reasons why offending decreases with age. Studies on brain development suggest that adolescents are more likely to take more risks, be more influenced by their peers, and act on instant gratification. Human brains do not develop completely until approximately age 26, and the rational decision-making centers are the last to develop. As people age, they tend to become more future-oriented, better able to manage their emotions, and more able to assess the consequences of their actions.[72] Of individuals who were incarcerated, older individuals are substantially less likely to recidivate. If they do recidivate, it is more likely to involve a non-violent offense or technical violation.[73] Aging out of the criminal justice system altogether, however, is the typical outcome.

Criminal records alone are not reliable, accurate, or sufficient to determine a person's risk to public safety or risk of engaging in future criminal activity as most people who commit crimes do not engage in further criminal activity, recidivism risk is highly individual and circumstance dependent, and the risk of reoffending decreases with time and age. Additionally, research shows that positive environmental factors and supportive services, such as access to housing, decrease the risk that a person will reoffend.

C. Primacy of Stable Housing as It Affects Recidivism Rate and Public Safety

There is compelling evidence that excluding or denying housing or housing assistance to people with criminal records can have detrimental and counterproductive impacts on the people with criminal records, and, by increasing the risk of recidivism, undermine the public safety of communities as a whole. Denying housing assistance to people with prior criminal justice system involvement can increase the risk of housing instability and homelessness, which can, in turn, increase their risk of recidivism. As noted earlier, formerly incarcerated individuals are nearly ten times more likely to be homeless than the general public, and the rates are significantly higher among those released from jail or prison within the past two years.[74] Homelessness and housing instability among people returning to the community from prisons and jails can increase their recidivism, particularly in the first few months and years following release from prison or jails, when the

[64] Abt Associates (2014). Study of PHAs' Efforts to Serve People Experiencing Homelessness. U.S. Department of Housing and Urban Development: Washington, DC.

[65] U.S. Department of Justice Bureau of Justice Assistance. (2022). ''Opening Doors, Returning Home: How Public Housing Authorities Across the Country Are Expanding Access for People with Conviction Histories.'' *https://bja.ojp.gov/doc/opening-doors-returning-home.pdf.*

[66] *Following Incarceration, Most Released Offenders Never Return to Prison.* Rhodes, W., Gaes, G., Luallen, J., King, R., Rich, T., & Shively, M. (2014). *https://doi.org/10.1177/0011128714549655.*

[67] *Kurlychek, Megan,* et al.*, Enduring Risk? Old Criminal Records and Short-Term Predictions of Criminal Involvement, 53 Crime & Delinq. 64.70 (2007).*

[68] See *Recidivism Rates: What You Need to Know.* Council on Criminal Justice (2021). *https://counciloncj.org/recidivismreport/* and *Reforms without Results: Why states should stop excluding violent offenses from criminal justice reforms.* Prison Policy Initiative (2020). *https://www.prisonpolicy.org/reports/violence.html.*

[69] Bureau of Justice Statistics. ''*Recidivism and Reentry*'' available at *https://bjs.ojp.gov/topics/recidivism-and-reentry.* Accessed on February 22, 2024.

[70] *The Limits of Recidivism: Measuring Success After Prison* (2022). *https://nap.nationalacademies.org/read/26459/chapter/1.*

[71] *A New Lease on Life.* The Sentencing Project (2021). *https://www.sentencingproject.org/app/uploads/2022/08/A-New-Lease-on-Life.pdf.*

[72] *Adolescent Development and the Regulation of Youth Crime.* Scott, E. & Steinberg, L. (2008). *https://ccoso.org/sites/default/files/import/Adol-dev-and-reg-of-crime.pdf.*

[73] *The Effects of Aging on Recidivism Among Federal Offenders.* United States Sentencing Commission (2017). *https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171207_Recidivism-Age.pdf.*

[74] *See* fn.40, *supra,* and the accompanying text.

need for stabilizing supports is most acute. One study estimated that people with unstable housing were up to seven times more likely to reoffend.[75] Housing insecurity also increases the risk of recidivism for people on probation.[76] The type of housing a person is released to also affects the risk of recidivism, and release to emergency shelters after release from jail or prison increases the odds of rearrest.[77] Research also has found that moving residences increases the risk of recidivism by at least 70 percent every time someone who is formerly incarcerated changes their residence due to the destabilizing impact.[78]

By contrast, there is compelling evidence that stable housing and the provision of housing assistance programs can reduce the risk of recidivism, which includes arrests, convictions, and incarceration for new offenses. A study by the Urban Institute found that people who secured housing within a few months after release from jail or prison had better mid-term outcomes than those who had less stable access to housing.[79] Stable housing also increases the ability of formerly incarcerated people to find and maintain employment and reestablish family ties, both of which have also been shown to reduce recidivism.[80] Numerous studies have found that the provision of affordable housing with other supportive services, including permanent supportive housing programs, reduced police interactions, arrest rates, and admission rates to jail and prison, days spent in jail or prison, and increased successful completion of parole.[81]

[75] Valerie Schneider, *The Prison to Homelessness Pipeline: Criminal Records Checks, Race, and Disparate Impact,* 93 Ind. L. J. 421, 432–33 (2018).

[76] Jacobs, L.A., & Gottlieb, A. (2020). The Effect of Housing Circumstances on Recidivism: Evidence From a Sample of People on Probation in San Francisco. Criminal Justice and Behavior, 47(9), 1097–1115. *https://doi.org/10.1177/0093854820942285*

[77] Clark, V. (2015). The Effect of Community Context and Post-Release Housing Placements on Recidivism Evidence from Minnesota. Minnesota Department of Corrections.

[78] Tesfai, A. & Gilhuly, K. (2016). The Long Road Home: Decreasing Barriers to Public Housing for People with Criminal Records. Human Impact Partners.

[79] Yahner, J. & Visher, C. (2008). Illinois Prisoners' Reentry Success Three Years after Release. Urban Institute.

[80] Baer, D., Bhati, A., Brooks, L., Castro, J., La Vigne, N., Mallik-Kane, K., Naser, R., Osborne, J., Roman, C., Roman, J., Rossman, S., Solomon, A., Visher, C., & Winterfield, L. (2006). Understanding the Challenges of Prisoner Reentry: Research Findings from the Urban Institute's Prisoner Reentry Portfolio. Urban Institute.

[81] *See* studies identified at *https://www.huduser.gov/portal/pdredge/pdr-edge-frm-asst-sec-041922.html.*

IV. State and Local Legislative and Policy Changes To Reduce Barriers to Housing for People With Criminal Histories

Recognizing that people with criminal records face barriers and exclusions from rental housing and housing assistance programs, several states and localities have enacted legislation or adopted policies that regulate the use of criminal records in admissions decisions. Many of these laws, including the examples below, apply to providers of government- and HUD-assisted housing programs as well as private-market rental housing.

In 2018, the District of Columbia amended its local code to adopt a *Fair Criminal Record Screening for Housing* policy that prohibits any landlord or provider of rental housing from accessing applicants' arrest records, limits landlords' consideration to 48 specified criminal convictions that must have occurred in the past seven years and requires landlords to consider mitigating factors prior to denying admission to rental housing.

In 2019, Colorado passed the *Rental Application Fairness Act.*[82] Under this law, landlords may not consider arrest records or criminal conviction records more than five years before the date of housing application. There are several exceptions, including for crimes related to methamphetamine, crimes requiring registration to the sex offender registry, and homicides.

Also in 2019, the Cook County, Illinois, Board of Commissioners passed an amendment to its county human rights ordinance that prohibits housing discrimination on the basis of a criminal record. Specifically, this law prohibits denying admission to rental housing based on a criminal history unless there is a conviction within the past three years, or the person is subject to a sex offender registry bar. It also requires landlords to perform an individualized assessment and to show that any denial based on a criminal conviction in the past three years is necessary to protect against a demonstrable risk to personal safety and/or property.[83]

In 2021, Illinois passed the *Public Housing Access Bill,* under which PHAs are required to limit their lookback period for criminal activity to six months prior to the application date (the two federal mandates remain in place).[84]

New Jersey's *Fair Chance in Housing Act,* passed in 2021, places limits on housing providers' ability to inquire about arrests, expunged criminal records, and records from the juvenile justice system. Only after a conditional offer of housing is made may a housing provider run a criminal background check and an individualized assessment is required prior to any denial based on a criminal record. The law includes a tiered system for denial under which certain types of conviction records require a longer lookback period than others. For example, a six-year lookback period is in place for a first-degree indictable offense; that decreases to four years for a second- or third-degree indictable offense.[85]

New York State's housing agency, Homes and Community Renewal (HCR), has adopted a policy that regulates what criminal history information may be considered and used in connection with admissions decisions by housing providers receiving state funding. HCR's policy limits the review of criminal records by applicants to state-funded housing providers to misdemeanors within the last year or felonies within the last five years and also requires that state-funded housing providers conduct an individualized assessment that must take into account multiple factors to assess the relevance of the criminal conviction to housing suitability.[86] HCR provides state-funded housing agencies with a worksheet to guide this individualized assessment.[87]

In 2017, Seattle, Washington, enacted the *Fair Chance Housing Ordinance,* which prohibits landlords from inquiring about criminal history or taking adverse action based upon criminal history.[88] Its goal is to prevent unfair bias against individuals with prior criminal justice system involvement. The ordinance also prohibits advertising language that would automatically exclude individuals with arrest records,

[82] Colorado HB 19–1106(2020), *https://leg.colorado.gov/sites/default/files/2019a_1106_signed.pdf.*

[83] Cook County Board of Commissioners, *https://www.cookcountyil.gov/content/just-housing-amendment-human-rights-ordinance.*

[84] Illinois Public Act 101–0659 (2021), *https://ilga.gov/legislation/publicacts/101/PDF/101-0659.pdf.*

[85] New Jersey Office of the Attorney General, *Fair Chance in Housing Act What You Need to Know, https://www.njoag.gov/wp-content/uploads/2022/01/FCHA-Flowchart-12.30.21.pdf.*

[86] New York State Homes and Community Renewal, *https://hcr.ny.gov/system/files/documents/2022/10/doc-y-guidance-for-assessing-justice-involved-applicants_-10.7.2022.pdf.*

[87] New York State Homes and Community Renewal, *https://hcr.ny.gov/system/files/documents/2022/12/doc-x-justice-involved-worksheet_-10.7.2022.pdf.*

[88] Seattle, Wash., Municipal Code sec. 14.09, *et seq.*

conviction records, or criminal histories.[89]

In 2020, both Oakland and Berkeley, California, enacted *Fair Chance Housing Ordinances.*[90] The laws prohibit most types of landlords from asking about or taking adverse action based on criminal history. There are narrow exceptions including one that allows housing providers to comply with federal or state laws that require automatic exclusion based on specific types of criminal histories.

Ann Arbor, Michigan, enacted its *Fair Chance Access to Housing* law in 2021.[91] Similar to Oakland and Berkeley, Ann Arbor's law also prohibits landlords from asking about or taking adverse action due to criminal history with certain narrow exceptions. As with the California laws discussed above, even where exceptions do exist, emphasis is placed on providing applicants with notice and an opportunity to withdraw their applications for tenancy.

This proposed rule is informed by some of these state and local laws, but HUD does not propose to go so far as to bar any consideration of criminal history.

Lookback Periods

As noted above, several of these state and local legislative and policy initiatives have involved not only *Fair Chance* statutes and ordinances, but efforts aimed directly at defining and limiting lookback periods for criminal activity when such activity may be relevant to a potential adverse housing action.

The issue of limiting lookback periods was specifically raised by HUD as an industry best practice in its 2015 notice to PHAs and owners of federally assisted housing.[92] Likewise, many reentry advocates point to overly lengthy lookback periods as one of the major impediments to successful reentry.[93] While declining to provide a one-size-fits-all solution, HUD itself has suggested in 2001 [94] that five years *may be* a reasonable period for serious offenses, depending on the offense. HUD notes, however, the more recent efforts by states and localities across the country and social science research conducted since 2001 support further reducing these lookback periods.[95]

Recognizing the discretion currently afforded to PHAs and owners to establish their own lookback periods and the absence of standard practice in this area (with many PHAs or owners operating under policies that allow lookback periods of ten years or more), HUD proposes that in making admissions decisions a lookback period that considers convictions that occurred more than three years prior to an application is presumptively unreasonable. The proposed rule would permit, however, a PHA or owner to determine a longer lookback period for certain crimes if they are able to provide empirical evidence justifying such longer period.

HUD seeks specific comment from the public on the issue of lookback periods for criminal activity (*see* ''Questions for public comment,'' *infra,* Section VII, #2).

V. Need To Bring Regulations Into Alignment With Civil Rights Laws and Other Legal Requirements

HUD has a duty to both administer its programs in a manner that affirmatively furthers fair housing (AFFH) [96] and to ensure that PHAs, owners, and grantees do not discriminate in HUD's housing programs.[97] Additionally, even when statutes and regulations grant HUD-assisted housing providers discretion to deny admission, terminate, or evict, based on certain criminal records, criminal activity, or for other reasons, this discretion is necessarily limited by requirements for housing providers under civil rights statutes, including the Fair Housing Act's mandate to not discriminate.[98]

Criminal record policies that are otherwise lawful are still subject to the Fair Housing Act's requirement to provide reasonable accommodations for people with disabilities and similar requirements under Section 504 of the Rehabilitation Act and the Americans with Disabilities Act.[99] HUD's

[89] *See Yim* v. *City of Seattle,* 63 F.4th 783 (9th Cir. 2023) (ruling that the provision preventing landlords from asking about a tenant's criminal record violates the First Amendment, but upholding the portion of the ordinance that bars a landlord from taking adverse action based on a tenant's criminal history).

[90] Berkeley, Cal., Mun. Code sec. 13.106.040, *et seq.;* Oakland, Cal., Mun. Code sec. 8.25.010, *et seq.*

[91] Ann Arbor, Mich., Mun. Code, Title IX, Chapter 122, sec. 9:600, *et seq.*

[92] *See* fn.20, *supra.*

[93] *See, e.g., When Discretion Means Denial: A National Perspective on Criminal Barriers to Federally Subsidized Housing* (Chicago: Sargent Shriver National Center on Poverty Law, 2015), p.12.

[94] *See, Screening and Eviction for Drug Abuse and Other Criminal Activity,* 66 FR 28776, 28779 (May 24, 2001).

[95] *See* studies cited in section III, B–C, *supra.*

[96] *See* 42 U.S.C. 3608(d), (e)(5).

[97] *See, e.g., San Francisco Housing Auth.* v. *United States,* No. C 03–2619 CW, Slip Op. at 14–15 (N.D. Cal. July 29, 2003) (noting that ''[t]his affirmative fair housing duty was imposed by Congress to correct the longstanding 'bureaucratic myopia' of HUD and its predecessor agencies regarding civil rights and housing discrimination,'' and that ''[t]he public has a vital interest in ensuring that the HOPE VI program is administered in accordance with the Fair Housing Act.'').

[98] *See, e.g., Alexander* v. *Edgewood Mgmt. Corp.,* Civ. No. 15–01140 (RCL), 2016 U.S. Dist. LEXIS 145787, at *7 (D.D.C. July 22, 2016) (noting that although defendant was allowed to deny admission to applicants for engaging in certain criminal activity under 42 U.S.C. 13661(c) (pertinently, for drug-related or violent criminal activity or other criminal activity which would adversely affect the health, safety, or right to peaceful enjoyment of the premises by other residents which was engaged in in a reasonable time prior to admission), this ''is still subject to claims of disparate impact''); *Langlois* v. *Abington Hous. Auth.,* 234 F. Supp. 2d 33, 67–69 (D. Mass. 2002) (explaining how program statutes and the Fair Housing Act must be read in harmony, and that the permission the Quality Housing and Work Responsibility Act of 1998 grants to PHAs to enact local preferences is limited by the Fair Housing Act, including its prohibition against policies having an unjustified disparate impact); *Comer* v. *Cisneros,* 37 F.3d 775, 795 (2d Cir. 1994) (''Although the U.S. Housing Act, by its terms, does permit a local preference, such preference is subject to various limitations including that its administration must be consistent with the Constitution and civil rights laws.''); *Altman* v. *Eco Vill., Ltd.,* No. C 79–202, 1984 U.S. Dist. LEXIS 24962, at *21 (N.D. Ohio 1984) (citing the Fair Housing Act and finding in favor of tenants of a Section 8 new construction building and against the owner for discriminatory eviction actions taken against the tenants, while also finding that the relevant programmatic statute granted the owner broad discretion to evict tenants, even without citing any cause). *See e.g.,* Operations Notice for the Expansion of the Moving to Work Demonstration Program, 85 FR 53458–9 (''Notwithstanding the flexibilities described in this notice, the public housing and voucher funding provided to MTW agencies remain federal funds and are subject to any and all other federal requirements outside of the 1937 Act . . . As with the administration of all HUD programs and all HUD-assisted activities, fair housing, and civil rights issues apply to the administration of MTW demonstration. This includes actions and policies that may have a discriminatory effect on the basis of race, color, sex, national origin, religion, disability, or familial status (see 24 CFR part 1 and part 100 subpart G) or that may impede, obstruct, prevent, or undermine efforts to affirmatively further fair housing.''); 85 FR 53449–50 (''HUD and the MTW agencies may not waive or otherwise deviate from compliance with Fair Housing and Civil Rights laws''); cases cited in fn.99 (courts consistently finding that eviction actions that are not mandatory but are allowed by program statutes (*i.e.* for criminal activity that threatens the health, safety, and welfare of other tenants) are subject to reasonable accommodation requirements of the Fair Housing Act.)

[99] *See Hunt* v. *Aimco Props., L.P.,* 814 F.3d 1213, 1226 (11th Cir. 2016) (finding in favor of tenant and against landlord where landlord terminated tenant's lease based on tenant's son threating to ''sacrifice [the landlord's staff members] then trap all the residents in their apartments and set the property on fire'', where the landlord refused to modify its policies to accommodate the tenant's son's disabilities); *Sinisgallo* v. *Town of Islip Hous. Auth.,* 865 F. Supp. 2d 307, 341–343 (ED NY May 23, 2012) (PHA's attempt to evict a tenant for assaulting his neighbor where the tenant's behavior was caused by his disability and where the PHA made no attempt to consider reasonable accommodations which would eliminate or acceptably minimize the risk the tenant posed violated the Fair Housing Act); *Roe* v. *Sugar River Mills Associates,* 820 F.

Continued

regulations must provide sufficient guidance to owners and managers of federally assisted housing to enable them to, among other things, comply with civil rights laws. *See* 42 U.S.C. 13603(b)(2)(D).

This proposed rule would incorporate changes to program regulations that, in addition to furthering the policy aims discussed above, help HUD-assisted housing providers ensure they are complying with these obligations. Much of the conduct this rule proposes to require has been found to be required by courts under the Fair Housing Act and other laws. For example, various courts have held that statutory and regulatory program rules require an independent assessment—as this rule would require—or have held that it is an abuse of discretion for a housing provider to fail to consider individual circumstances.[100] HUD believes this proposed rule would help PHAs and HUD-subsidized housing providers comply with such case law by providing necessary clarity.

Policies or practices that bar persons from housing based on their criminal history may have a disparate impact on certain groups of persons [101] and thus implicate the Fair Housing Act and other civil rights laws. In particular, given data showing that persons of color and persons with disabilities are disproportionately impacted by criminal justice system involvement, courts in recent years have recognized that criminal records-based policies may discriminate because of characteristics protected under the Fair Housing Act.[102] People of color are ''arrested, convicted and incarcerated at rates [that are] disproportionate to their share of the general population.'' [103] In 2019, the incarceration rate of Black males was 5.7 times that of White non-Hispanic males.[104] Consistent with longstanding jurisprudence, even if a housing provider has no intent to discriminate, a criminal records policy can violate the Fair Housing Act if it has an unjustified discriminatory effect on a protected class.[105] To adequately justify a criminal records policy with a disparate impact on a protected class (such as race or disability), a housing provider must be able to demonstrate that it is necessary to serve the housing provider's substantial, legitimate, nondiscriminatory interest, and that such interest could not be served by another practice that has a less discriminatory effect.[106] While ensuring resident safety and protecting property are substantial and legitimate interests, they must be the actual reasons for a criminal records policy and a housing provider must be able to prove through reliable evidence that its policy actually assists in protecting resident safety and/or property and that interest could not be served by another policy that has a less discriminatory effect.[107]

Supp. 636 (D.N.H 1993) (finding that HUD-funded housing provider would violate Act by evicting tenant with a conviction for disorderly conduct for threatening elderly neighbor without first demonstrating that no reasonable accommodation would eliminate or acceptably minimize the risk he posed to other residents at the complex); *Roe* v. *Housing Authority of City of Boulder,* 909 F. Supp. 814 (D. Colo 1995) (finding PHA violated the Fair Housing Act by attempting to evict tenant without considering accommodating the tenant's disabilities where tenant had struck and injured another tenant, threatened apartment manager, and created noise disturbing neighbor); PIH Public Housing Occupancy Guidebook 2.2 (''A PHA must engage in an individualized analysis to determine if it must provide a reasonable accommodation to an individual with a disability who allegedly is in violation of the PHA's criminal record policies, rules, or lease.'') *available at https://www.hud.gov/sites/dfiles/PIH/documents/PHOGLeaseRequirements.pdf.*

[100] *See, e.g. Carter* v. *Lynn Hous. Auth.,* 450 Mass. 626, 635, 880 N.E.2d 778, 785 (2008) (considering 42 U.S.C. 1437 *et seq.* and 24 CFR 982.552(c)(2)(i) as requiring the consideration of mitigating circumstances) (quoting *Commonwealth* v. *Fredette,* 56 Mass. App. Ct. 253, 259 n.10, 776 N.E.2d 464 (2002) (''Failure to exercise discretion is itself an abuse of discretion'')); *Singleton* v. *Bos. Hous. Auth.,* 98 Mass. App. Ct. 1105, 150 N.E.3d 1163 (2020) (due process regulations at 24 CFR 982.552(c)(2)(i) require the decision maker to weigh the evidence, find facts relating to ''all relevant circumstances,'' and to balance them in the decision whether to impose a sanction less severe than termination); *Matter of Gist* v. *Mulligan,* 2009 NY Slip Op 6688, ¶ 1, 65 A.D.3d 1231, 1232, 886 N.Y.S.2d 172, 173 (App. Div. 2nd Dept.) (finding the decision to terminate a tenant's voucher by the PHA to be an abuse of discretion based on the circumstances where the penalty of termination was shocking to one's sense of fairness, even though evidence supported that the participant engaged in program violations which constituted valid bases of termination) (citing *Matter of Sicardo* v *Smith,* 49 AD3d 761, 762, 853 NYS2d 639 [2008]; *Matter of Riggins* v *Lannert,* 18 AD3d 560, 562, 796 NYS2d 93 [2005]; *Matter of Brown* v *Lannert,* 272 AD2d 323, 714 NYS2d 677 [2000]).

[101] *See* fn.20, *supra. See also* ''Implementation of the Office of General Counsel's Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions'' at 2 (June 10, 2022).

[102] *See, e.g., Sams* v. *GA W. Gate, LLC,* No. CV415–282, 2017 U.S. Dist. LEXIS 13168, at *13–14 (S.D. Ga. Jan. 30, 2017) (finding that plaintiffs had successfully plead that a policy banning those with certain convictions in the last 99 years would disparately impact African Americans based on statistics showing that ''African Americans are twice as likely to have criminal convictions as caucasians [and that] . . . in 2014, African Americans represented 36% of the prison population in the United States but only 12% of the country's total population''); *Jackson* v. *Tryon Park Apartments, Inc.,* No. 6:18–CV–06238 EAW, 2019 U.S. Dist. LEXIS 12473, at *8–9 (W.D.N.Y. Jan. 25, 2019) (finding that plaintiff had successfully plead that policies excluding people for having a felony conviction have a disparate impact on applicants for housing on the basis of race and color because ''[e]mpirical evidence shows that nationally, and in New York State, blanket bans on eligibility, based on criminal history, result in the denial of housing opportunities at a disproportionate rate for African Americans and minorities''); *La. Fair Hous. Action Ctr.* v. *Azalea Garden Props., LLC,* No. 22–74, 2022 U.S. Dist. LEXIS 77083, at *14 (E.D. La. Apr. 27, 2022) (finding that plaintiff's statistical data showing that ''a disproportionate number of African Americans are arrested and incarcerated in the United States compared to white persons, [which] is particularly true at the local level in Jefferson Parish where the apartment building was located'', made plausible the allegation that a blanket ban (or something short of a blanket ban) excluding all applicants with any criminal history disproportionately affects certain applicants because of race), *rev'd on other grounds,* 82 F.4th 345 (5th Cir. 2023); *Jones* v. *City of Faribault,* No. 18–1643 (JRT/HB), 2021 U.S. Dist. LEXIS 36531, at *55 (D. Minn. Feb. 18, 2021) (recognizing that while it is ''of course true that the [defendant] did not create the pervasive and well-known racial disparities in the criminal justice system . . . if the [defendant's] criminal screening policy intersects with a pre-existing, known racial disparity in a way that creates a similar racial disparity in housing, then it is possible that the [defendant's] policy creates a housing disparity and violates the [Fair Housing Act.]''); *Conn. Fair Hous. Ctr.* v. *CoreLogic Rental Prop. Sols.,* LLC, 478 F. Supp. 3d 259, 291–93 (D. Conn. 2020) (finding plaintiffs' evidence that nationally, African Americans and Latinos are more likely to be arrested for federal drug crimes than whites, and, in Connecticut, African Americans are more likely to be arrested than white, created a sufficient issue for trial regarding whether defendants' policy created a disparate impact on African Americans and Latinos); *Alexander* v. *Edgewood Mgmt. Corp.,* No. 15–01140 (RCL), 2016 U.S. Dist. LEXIS 145787, 2016 WL 5957673, at *2–3 (D.D.C. July 25, 2016) (finding plaintiff properly plead that the defendant violated the Fair Housing Act where the applicant was rejected based on a seven year old misdemeanor conviction and an over 15 year old conviction that was later overturned and which the plaintiff alleged created a discriminatory effect on African Americans because a disproportionate number of individuals arrested, convicted, and incarcerated in the District of Columbia are African American); *Fortune Soc'y* v. *Sandcastle Towers Hous. Dev. Fund Corp.,* 388 F. Supp. 3d 145, 173 (E.D.N.Y. 2019) (finding plaintiffs presented sufficient evidence that defendants had blanket ban on anyone with a criminal record and allowing plaintiffs expert witness to testify at trial about how disparities in the criminal justice system support that defendant's criminal record policy has a disparate impact on African American and Latino individuals).

[103] *See* fn.1, *supra.* See also Report Highlights 'Staggering' Racial Disparities in U.S. Incarceration Rates (*usnews.com*) (reporting that nationally ''Black Americans are incarcerated at nearly 5 times the rate of white Americans, though in some states the disparity is far greater.'').

[104] Robey, J., Massoglia, M., & Light, M. (2023). A generational shift: Race and the declining lifetime risk of imprisonment. *Demography,* p. 1.

[105] *See* 24 CFR 100.500; *see also Tex. Dep't of Hous. & Cmty. Affairs* v. *Inclusive Cmtys. Project, Inc.,* 576 U.S. at 519, 527–28, 535–36, 541 (upholding disparate impact liability, overviewing HUD's regulation which provides this framework to analyze disparate impact claims and citing this framework with approval).

[106] *Id.*

[107] *See* fn.1, *supra; see also Conn. Fair Hous. Ctr.* v. *CoreLogic Rental Prop. Sols., LLC,* 478 F. Supp. 3d 259, 300 (D. Conn. 2020) (applying this same principle to its partial grant of summary judgment to plaintiff on issue of whether a particular criminal records screening policy was necessary to protect health and safety and concluding that excluding

As described above, this proposed rule is intended to address certain common practices that HUD believes may sweep too broadly in their attempts to serve legitimate interests such as tenant safety and so may expose PHAs and HUD-assisted housing providers to risk of violating the Fair Housing Act or other civil rights statutes. Non-discrimination requirements are extensive, and compliance with these proposed regulations does not mean that compliance is achieved under civil rights laws. However, these regulations should make it clearer and easier for program participants such as owners and PHAs to develop narrowly tailored policies that fulfill the housing mission of providing safe, affordable homes with improved compliance with fair housing and nondiscrimination obligations.

VI. Summary of Proposed Rule

Consistent with HUD's authority and to address the need for the regulation discussed above, HUD is proposing changes to 24 CFR parts 5, 245, 882, 960, 966, and 982. Part 5 applies generally to HUD programs; however, subpart I, Preventing Crimes for Federally Assisted Housing—Denying Admission and Terminating Tenancy for Criminal Activity or Alcohol Abuse, does not apply to the Public Housing or HCV programs. Program-specific provisions related to denial of admissions and termination of tenancy similar to those in part 5, subpart I, are included in the Moderate Rehabilitation Program, public housing, and HCV regulations (Section 8 Moderate Rehabilitation Program (24 CFR part 882), Public Housing Program (24 CFR parts 960 and 966), and Section 8 Tenant-Based Assistance: Housing Choice Voucher Program (24 CFR part 982)). Part 5, subpart J applies to PHAs that administer public housing and Section 8 programs.

Throughout the proposed changes, HUD, where possible and where not contradicted by statute, uses person-centered language that describes an individual's behavior rather than labeling that individual. To that end, this proposed rule would amend language that references ''alcohol abusers'' and ''drug criminals'' and instead use the language ''alcohol abuse'' and ''drug-related criminal activity.'' HUD also proposes consistent language and cross-references throughout the regulations.

With respect specifically to the term ''alcohol abuse'', HUD recognizes that some agencies, advocates, and members of the disability and medical communities have moved away from the term ''alcohol abuse'' towards alternatives such as ''alcohol use disorder,'' ''excessive alcohol use,'' or ''alcohol use'' due to stigma associated with the term ''alcohol abuse.'' [108] HUD considered these alternatives while drafting this proposed rule but has elected not to adopt any of them at this time. The term ''alcohol abuse'' is taken directly from statutory language in QHWRA, which permits denial of admission or eviction from federally assisted housing in a situation where ''abuse (or pattern of abuse) of alcohol . . . interfere[s] with the health, safety, or right to peaceful enjoyment of the premises by other residents.'' [109] In other words, ''alcohol abuse'' is a term of art used to describe a category of conduct that can justify exclusion from housing. It has been construed in case law and carried forward in numerous regulatory provisions, subregulatory guidance, and leases. Any replacement term, unless substantively identical, would alter the scope of the conduct that permits exclusion and create questions about how to reconcile the rule with the governing statutes.

HUD has considered using different terms, for example, ''excessive alcohol use'' and ''alcohol use'' in this proposed rule but has declined to do so because they are broader than ''alcohol abuse.'' Consequently, substituting these terms would expand the category of conduct that permits exclusion, contrary to the purposes of this proposed rule, and may lead to more admission denials and evictions than were intended by QHWRA's statutory language.

HUD has also contemplated using the term ''alcohol use disorder'' as an alternative to ''alcohol abuse,'' as some federal agencies have begun using because of its clinical definition.[110] However, not only is this term inconsistent with the statutory language in QHWRA, but it also creates confusion in the fair housing context, because individuals with alcohol use disorder are people with a disability under the Fair Housing Act, Americans with Disabilities Act, and the Rehabilitation Act of 1973. Using a term as the standard for permitting exclusion that is also a recognized disability could create problems harmonizing this standard with the analysis required under the civil rights laws. HUD seeks public comment specifically on the issue of the continued use of the term ''alcohol abuse'' (*see* ''Questions for public comment,'' *infra,* Section VII, #11).

HUD also proposes at various places to include ''PHA employees'' or ''property employees'' among those meant to be protected from threatening activity. The Housing Act of 1937 and QHWRA both evince a desire to include these employees among those intended to be protected from threatening activity, but they are not uniformly included in the existing regulations.

HUD also proposes to add the following definitions to § 5.100: ''*Criminal history*'', ''*Criminal record*'', ''*Currently engaging in or engaged in*'', ''*Individualized assessment*'', and ''*Preponderance of the evidence.*'' These terms are discussed throughout this section where appropriate. With respect to the term ''*Currently engaging in or engaged in*'', HUD seeks specific comment on certain aspects of the proposed definition (see ''Questions for public comment,'' *infra,* section VII, #1).

A. Part 5: Individualized Assessment

To increase access to covered housing programs, this proposed rule would require that housing providers conduct an individualized assessment of each individual whose suitability is under question based on the existence of a criminal history. Though the individualized assessment requirement would apply slightly differently to different programs and circumstances due to statutory and programmatic differences, HUD intends to increase access to HUD's programs by applying the new individualized assessment process.

This rule proposes to amend 24 CFR part 5 by adding a definition of ''individualized assessment'' to § 5.100. The definition would provide that the purpose of the ''individualized assessment is to determine the risk that an applicant will engage in conduct that would adversely affect the health, safety, and peaceful enjoyment of the premises by other residents, the owner, or property employees.'' As proposed, HUD's definition of ''individualized assessment'' would require holistic consideration of ''multiple points of information'' that may include a criminal history but also relevant

people from housing based on arrests alone cannot serve a legitimate business justification.)

[108] Nat'l Inst. on Drug Abuse, *Words Matter—Terms to Use and Avoid Using When Talking About Addiction* (Nov. 29, 2021), *https://nida.nih.gov/nidamed-medical-health-professionals/health-professions-education/words-matter-terms-to-use-avoid-when-talking-about-addiction* (suggesting that the term ''abuse'' should be avoided because it has a high association with negative judgments and punishment).

[109] 42 U.S.C. 13661(b)(1)(B), 13662(a)(2).

[110] Nat'l Inst. on Alcohol Abuse & Alcoholism, *Understanding Alcohol Use* (Apr. 2023), *https://www.niaaa.nih.gov/sites/default/files/publications/Alcohol_Use_Disorder_0.pdf* (highlighting that ''alcohol use disorder'' is a medical condition listed in the *Diagnostic and Statistical Manual of Mental Disorders,* Fifth Edition, that encompasses ''alcohol abuse,'' among other conditions).

mitigating factors, including but not limited to those set forth in § 5.852(a)(1) and (2), and repeated in the public housing and voucher regulations as appropriate. In conjunction with the individualized assessment, HUD also proposes to define ''criminal history'' in § 5.100 to mean an individual's past involvement with criminal activity or the criminal justice system, including but not limited to that reflected in a criminal conviction. Criminal history may include information that appears in an individual's criminal record but may also include information that is not part of that individual's criminal record. ''Criminal record'' is proposed to be defined as a history of an individual's contacts with law enforcement agencies or the criminal justice system. A criminal record may include details of warrants, arrests, convictions, sentences, dismissals or deferrals of prosecution; acquittals or mistrials pertaining to an individual; probation, parole, and supervised release terms and violations; sex offender registry status; and fines and fees.

This proposed rule retains existing requirements in § 5.851 regarding authority to screen applicants for admissions and terminate tenants. HUD is proposing, however, to add a requirement that, where discretion exists to deny admission or terminate, a housing provider must consider certain circumstances listed in § 5.852 before doing so based on the following circumstances: a criminal record, a finding of criminal activity, illegal drug use, or alcohol abuse. In the admissions context, the considerations listed in § 5.852 must be considered as part of an individualized assessment.

This proposed rule is not intended to affect existing discretion with respect to admissions, evictions, and terminations on other bases. Section 5.851(a)(1) provides that a criminal record may be considered only in the manner and for the purpose described in this regulation. Paragraph (a)(2) would require an individualized assessment in every instance a housing provider considers criminal activity in an admissions decision except in circumstances where a statute requires denial of admission based on criminal history. Paragraph (a)(2)(i) would provide that such criminal activity, if determined relevant, may be considered only alongside the relevant mitigating factors, including the factors listed at § 5.852(a). HUD seeks public comment specifically on whether it should provide additional specificity in the final rule or in subsequent guidance on this requirement (*see* ''Questions for public comment,'' *infra,* Section VII, #5).

Section 5.851(a)(2)(ii) would provide that an arrest record alone may not be the basis for a determination that an individual has engaged in criminal activity that warrants denial of admission; however, the underlying conduct leading to an arrest may be relevant to determine the applicant's risk to engage in such conduct provided there is sufficient evidence independent of the arrest itself that the conduct occurred.

Section 5.851(b) would require that any termination based on criminal activity, illegal drug use, or alcohol abuse must be in accordance with the procedures and requirements of subpart I. Several of the specific protections discussed above are proposed to be expressly incorporated into relevant provisions in the regulations in the public housing and voucher provisions as discussed in more detail below.

HUD's intent is to provide practical guidance to assist housing providers with decisions regarding admissions and terminations that involve criminal history considerations. To that end, § 5.852(a)(1) outlines factors for a housing provider to consider in the admission context and the termination or eviction context. The factors listed in § 5.852(a)(1) are meant to provide housing providers with a holistic view of the individual seeking housing or seeking to maintain housing. The factors are not all inclusive, and housing providers may consider other relevant mitigating circumstances.

For an individualized assessment conducted for admissions purposes, § 5.852(a)(1), the relevant factors that should be considered include, but are not limited to, the nature and circumstances of the conduct in question, including seriousness, impact on suitability for tenancy, and length of time that has passed since the conduct; the extent to which the applicant or relevant household member has attempted to mitigate the risk that admission would adversely affect the health, safety, and peaceful enjoyment of the premises by other residents, the owner, or property employees; whether the applicant would like the owner to consider mitigating circumstances related to a medical condition of a household member; whether, considering relevant evidence, there is reason to believe the conduct will recur and rise to the level that it will interfere with the health, safety, or right to peaceful enjoyment of the premises by others; and whether further considerations must be made in order to comply with the obligation to consider and provide reasonable accommodations to persons with disabilities.

For terminations or evictions, relevant factors that housing providers should consider under § 5.852(a)(2) include the nature and circumstances of the conduct in question, including seriousness and impact on fitness for continued tenancy; the effect on the community and on other household members not involved in the conduct of termination or eviction or of inaction; whether the leaseholder or relevant household member was involved in the conduct and whether they have taken reasonable steps to prevent or mitigate the conduct; whether, considering relevant evidence, there is reason to believe the conduct will recur and rise to the level that it will interfere with the health, safety, or right to peaceful enjoyment of the premises by others; whether the applicant would like the owner to consider mitigating circumstances related to a medical condition of a household member; and whether further considerations must be made in order to comply with the obligation to consider and provide reasonable accommodations to persons with disabilities.

The proposed rule provides at § 5.851(a)(2)(ii) that the existence of an arrest record alone may not be the basis for a determination that an individual has engaged in criminal activity; however, actions that resulted in the arrest could be relevant as long as there is sufficient evidence, independent of the arrest, that the actions occurred, and other mitigating factors are considered.

HUD also recognizes that there are statutory limits that dictate how housing providers treat criminal histories in certain circumstances.[111] Where an individual is statutorily barred from admission or continued tenancy in a covered program, a housing provider is not required to conduct an individualized assessment or consider the above factors before denying them admission or terminating their tenancy.

In § 5.852(b), the proposed rule continues to give the housing provider the discretion to exclude a household member that the housing provider determined participated in or was culpable for an action or failure to act that warrants denial or termination. However, this rule would provide clarity that this determination must be

[111] 42 U.S.C. 13663 bars admission to federally assisted housing for individuals who are subject to a lifetime registration requirement under a State sex offender registration program; 42 U.S.C. 1437n(f) bars admission to and requires termination of individuals convicted of manufacturing or producing methamphetamine from public housing and Section 8-assisted housing.

based on a preponderance of the evidence. HUD proposes to add a definition for ''preponderance of the evidence'' at § 5.100, which would define the standard as more likely than not that a claim is true when all evidence is taken together and its reliability or unreliability is considered. This definition responds to the need for housing providers to have a clear, uniform standard with which to evaluate evidence underlying important decisions that have significant consequences on the future housing opportunities of tenants and prospective tenants.

Section 5.852(b) also proposes that the duration of any such exclusion must not exceed the time period an individual could be denied admission based on the same action or failure to act. In addition, this section would provide that such an exclusion may not be based solely on the fact of an arrest. The conduct underlying an arrest may provide the basis for an exclusion, provided the housing provider can meet a preponderance of the evidence standard that the conduct occurred independent of the fact of the arrest.

HUD proposes to remove current § 5.852(c) regarding consideration of rehabilitation because it would be redundant with paragraphs (a)(1)(iv) and (a)(2)(vi).

HUD also proposes to remove the language from § 5.852(d) that allows an owner to prohibit admission for a period of time longer than that authorized by statute. HUD proposes parallel deletions of equivalent language in the public housing regulations at § 960.203(c)(3)(ii) of the current regulation and § 966.4(l)(5)(vii)(E), as HUD proposes to replace this with the creation of a three-year presumptive lookback period for criminal history (see discussion of lookback periods under A.2 of this section).

The proposed paragraph (c) would revise current paragraph (e) and clarify that admission and eviction actions be consistent with 24 CFR part 5, subpart L, as well as the fair housing and equal opportunity provisions of § 5.105 and would clarify that the Fair Housing Act's prohibitions against discrimination extend to third-party screening services or companies contracted by housing providers.

Finally, HUD proposes to add a new paragraph (d) to address situations where an applicant fails to disclose criminal record information. The provision would provide that except in those circumstances where a PHA or owner solely relies on self-disclosure in reviewing an applicant's criminal record, the PHA or owner may deny admission for failure to disclose a criminal record only if that criminal record would be material to an admissions decision pursuant to this rule and the PHA's or owner's admissions standards. For criminal history information that is material to an admissions decision, the PHA may take the failure to disclose into account, along with other factors set out in this rule, in determining whether that criminal record warrants denial of admission. Parallel provisions are proposed to be added at §§ 960.203(d) and 982.552(f).

1. Drug-Related Criminal Activity and Illegal Drug Use §§ 5.854, 5.858

Section 5.854 addresses the admission of individuals who have engaged in drug-related criminal activity or illegal drug use. However, the currently codified title of the section does not include reference to ''illegal drug use.'' To provide clarity as to the scope of the application of this section, HUD proposes to revise the title of this section to add ''illegal drug use.'' Paragraph (a) of this section provides that housing providers must prohibit the admission of an applicant for three years following an eviction from federally assisted housing for drug-related criminal activity as required by 42 U.S.C. 13661(a). This proposed rule would clarify § 5.854(a)(1), by providing that a housing provider may admit a household member who engaged in drug-related criminal activity if the person is participating in or has successfully completed a substance use treatment service. The proposed rule would remove reference to ''an approved supervised drug rehabilitation program'' as the only basis for admittance so that the language is more closely aligned with the statute. HUD also proposes a minor change to paragraph (b) of this section to clarify that ''illegal use of a drug'' that threatens the health, safety, or right to peaceful enjoyment of the premises by ''property employees,'' and not only other residents or property employees, may be a basis for denying admission.

HUD proposes to revise Section 5.858, which addresses the eviction of tenants who have engaged in drug-related criminal activity or illegal drug use, in a number of ways. Because the title of the section does not include reference to ''illegal drug use,'' HUD proposes to revise the title of this section to add ''illegal drug use'' to clarify the scope of the application. HUD proposes to further clarify this section by revising § 5.858 into paragraphs (a) and (b) to more clearly make the distinction between the relevant lease provisions applicable to drug-related criminal activity versus illegal drug use. HUD also proposes to insert the word ''potential'' before ''grounds for you to terminate tenancy'' to make clear that the stated actions need not automatically result in evictions. Finally, HUD proposes to clarify that a housing provider may consider the health and safety of ''property employees'' when determining whether to evict a family based on a household member's illegal use of a drug or a pattern of illegal use.

2. Other Criminal Activity § 5.855

Section 5.855 addresses when a housing provider is allowed to prohibit admission to a housing program based on criminal activity other than that covered in § 5.854. This proposed rule would revise § 5.855(a) to clarify that the list of situations in which a housing provider has discretion to prohibit admission of a household member on the basis of criminal activity is an exclusive list. HUD would keep § 5.855(a)(1) and (2) unchanged (drug-related criminal activity and violent criminal activity) but would limit the remaining activities to situations where the health, safety, and right to peaceful enjoyment of residents or the health or safety of the PHA, owner, employee, contractor, subcontractor, or agent of the PHA or owner who is involved in the housing operations is actually threatened.

Section 5.855(b) provides that a housing provider may establish a reasonable period of time (a so-called ''lookback period'') before an admission decision during which an applicant must not have engaged in the activities enumerated in paragraph (a). While housing providers would continue to exercise discretion in setting lookback periods, this rule proposes to place a limit on what would be a reasonable period of time for lookbacks. Specifically, HUD proposes that ''prohibiting admission for a period of time longer than three years following any particular criminal activity is presumptively unreasonable.'' This section would also permit a housing provider to impose a longer period of time for a lookback, but only after a determination, based on empirical evidence, that a longer period of time is necessary to ensure the health, safety, and peaceful enjoyment of other tenants or property employees. An example of empirical evidence in this context may include data gathered through qualitative and/or quantitative research that is made the subject of a published, peer-reviewed study. HUD would provide other potential examples

through subregulatory guidance. The proposed rule does not provide that three years will always be a reasonable period of time, only that a time longer than three years is presumptively unreasonable. Parallel provisions are proposed at §§ 882.518(b)(2), 882.519(e)(2), 960.204(c)(2), and 982.553(a)(4)(ii)(B). HUD intends that, under the proposed rule, a housing provider may determine that a time less than three years is the reasonable lookback period for some or all activity. Any discretionary decision to deny admission based on activity occurring within the lookback period also would have to occur in accordance with the individualized assessment described elsewhere in this proposed rule.

In § 5.855(c), HUD proposes requiring PHAs and HUD-assisted housing providers to provide notice of the proposed action and a copy of any relevant criminal record to the subject of the criminal record and the applicant (except where otherwise prohibited by law) no less than 15 days prior to a notification of denial. The notification must inform the household that it has the opportunity to dispute the accuracy and relevance of the criminal record as well as the opportunity to present any relevant mitigating information, which the housing provider must consider. HUD specifically seeks comment on the proposed 15-day timeframe and whether the proposed process would adequately balance the needs of applicants and PHAs and HUD-assisted housing providers (*see* ''Questions for public comment,'' *infra,* Section VII, #3).

In § 5.855(d), HUD proposes that all determinations to deny admission under § 5.855 must be supported by a preponderance of the evidence, as defined by § 5.100. This section would also provide that the fact of an arrest could not be the basis for determining that an individual engaged in criminal activity but the conduct that resulted in the arrest can be such a basis provided there is sufficient evidence independent of the arrest that the conduct occurred, subject to the lookback period. Section 5.855(e) would be revised to make it clear that no applicant that was previously denied admission based on criminal activity shall be prohibited from applying for assistance, and that a HUD-assisted housing provider must not deny the application based solely on the prior denial.

3. Alcohol Abuse § 5.857

In § 5.857, HUD proposes to remove ''you have reasonable cause to believe'' from the description of the standard that a housing provider must meet to show that a household member's abuse or pattern of abuse of alcohol interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents. HUD is proposing this deletion because it believes it to be consistent with the preponderance of the evidence standard used throughout these regulations. The proposed deletion would avoid confusion that these standards are different. Parallel deletions are proposed at §§ 882.518(a)(1)(iii) and (b)(4), 960.204(a)(2)(ii) and (b), and 982.553(a)(2)(ii)(B) and (a)(4)(C)(3). HUD also clarifies that the health and safety provision applies to a property employee.

4. Evictions on the Basis of Criminal Activity § 5.861

Currently, § 5.861 provides that in order to evict an existing tenant based on criminal activity, a housing provider may do so regardless of whether the person has been arrested or convicted of such activity and without satisfying a criminal conviction standard of proof. This proposed rule would change the focus of this provision to the evidentiary standard that the housing provider does have to meet in order to evict, namely the preponderance of the evidence standard, which HUD believes is a more helpful articulation of the applicable rule. HUD continues to believe this standard can be met regardless of whether a person has been arrested or convicted, and by definition it can be met without satisfying a criminal conviction standard of proof. While this proposed rule does not change the substance of this pronouncement, in HUD's experience, clarifying specific limits is more helpful to ensure compliance with applicable laws than what this regulation currently does. Therefore, and also in keeping with the principles discussed in the preamble, this proposed rule would change the focus of this provision. HUD would eliminate the above-referenced language and provide that the housing provider may terminate tenancy and evict based on criminal activity if the housing provider determines that the covered person has engaged in the criminal activity described in subsections 5.858 and 5.859.

B. Part 5: Criminal Records

As specified in 24 CFR 5.901, part 5, subpart J, of HUD's regulations addresses access to and use of criminal conviction records and sex offender registry information obtained from law enforcement agencies. However, these regulations do not apply to access to and use of other criminal records, such as records obtained from third party screening companies and records of arrest or other criminal history information from law enforcement agencies. HUD is aware that increasingly, PHAs and owners are considering records other than conviction and sex offender registry records obtained directly from law enforcement agencies. Although this information has the potential to be less accurate, reliable, and instructive, this information is currently the least regulated by HUD's program regulations.

This proposed rule would therefore amend certain sections of subpart J in order to cover all criminal records, emphasize the limited circumstances in which HUD believes criminal records should be relevant in an admission or termination decision and to strengthen an individual's right to dispute their accuracy and relevance in such a decision. HUD proposes adding a new definition for ''criminal record'' to § 5.100, which would include a variety of interactions with the criminal justice system including arrests, warrants, conviction, sentencing, dismissals or deferrals of prosecution, not-guilty verdicts, and probation, parole, and supervised release violations.

Section 5.901(a) would be amended to clarify that subpart J applies when criminal records are obtained from a law enforcement agency or any other source for consideration in admission, lease enforcement, or eviction. Language would also be added to emphasize that PHAs and owners are not required to review an individual's criminal records beyond the extent necessary to satisfy statutory requirements.

Section 5.903(f) governs an individual's opportunity to dispute the accuracy and relevance of a criminal record of conviction obtained by a PHA from a law enforcement agency that may be used to deny their admission or evict them from federally assisted housing. The proposed rule would revise § 5.903 to provide that when a PHA obtains any criminal record, either under § 5.901(a) or by request of an owner under § 5.903(d), the PHA must notify the subject of the record and the applicant or tenant (except where otherwise prohibited by law) of the proposed action to be taken based on the record and give them an opportunity to dispute the accuracy and relevance of the record. The PHA would be required to provide this opportunity at least 15 days before a denial of admission, eviction or lease enforcement action based on such information. This proposed rule would also add a new paragraph (f)(2) to this section that would outline an individual's rights when an owner of

federally assisted housing obtains criminal record information from anywhere other than a PHA. Specifically, the owner must notify the subject of the record and the applicant or tenant if the owner obtains a criminal record relevant to admissions or continued tenancy and provide an opportunity to dispute the accuracy and relevance of the criminal conviction record before a denial of admission, lease enforcement action, or eviction. Such opportunity must be provided at least 15 days before any of the three foregoing decisions. Consistent with these changes in § 5.903, HUD proposes similar revisions to § 5.905(d) concerning notice and opportunity to dispute sex offender registration information. Finally, HUD proposes to revise § 5.903(g), which deals with records management, by deleting the phrase ''from a law enforcement agency,'' since all records should be afforded the safeguards set out in paragraph (g), regardless of their source.

This proposed rule would also add a new § 5.906 to ensure consistency of tenant selection plans and the regulations proposed in this rule and with any non-conflicting state or local law providing protections for people with criminal records. Proposed paragraph (a) would require owners of federally assisted housing—except owners of properties receiving tenant-based assistance and project-based voucher and moderate rehabilitation owners—to amend their tenant selection plan within six months of the effective date of the final rule to make such plan consistent with amended 24 CFR part 5. Under proposed paragraph (b), owners would be prohibited from considering the existence of a criminal record in the admissions process or in the termination of tenancy process except as specified in this proposed rule. HUD is proposing this paragraph to make it clear that overall compliance is required as of the effective date of the regulation, even if the requirement to amend Tenant Selection Plans under paragraph (a) is subject to the 6-month delay in effective date. HUD seeks public comment specifically on whether the six months proposed for amendment of the tenant selection plan is reasonable (*see* ''Questions for public comment,'' *infra,* Section VII, #6).

C. Part 245: Tenant Organizations

This proposed rule would amend part 245, subpart B—Tenant Organizations. Specifically, the proposed rule would revise existing paragraph (b) and redesignate existing paragraphs (b) and (c) of § 245.115. Paragraph (b)(1) would provide that owners covered under § 245.10 must make their tenant selection plans available to the public and specifies the acceptable manner in which this may be done, including by posting on its website or social media account(s), in a conspicuous location and accessible format, where applicable. Parallel provisions have been proposed at §§ 882.514(a)(2), 960.202(c)(2), and 982.54(b).

Proposed paragraph § 245.115(b)(2) would require that tenants be notified of proposed substantive changes to the tenant selection plan and be provided the right to inspect and copy such changes for 30 days following notification. This opportunity would extend to any legal or other representatives acting for tenants individually or as a group. During the 30-day inspection period, the owner would be required, during normal business hours, to provide a place reasonably convenient to the tenants where they may inspect and copy the materials in question.

Paragraph (b)(3) of this section would give tenants the right to draft written comments on the proposed changes to the tenant selection plan, with or without the help of tenant representatives, and submit them to the owner and to the local HUD office. This proposed change is consistent with HUD's recognition of the importance of ensuring tenants have a voice in how their homes are managed and would increase incentives to owners to update their tenant selection plans as needed to reflect program requirements and best practices. Additionally, by providing tenants with visibility into tenant selection policies, HUD believes that tenants will play a role in holding owners accountable for policies such as the proposed requirement to perform an individualized assessment prior to making a determination based on criminal records. HUD seeks public comment on whether owners should be required to respond to comments received from tenants (*see,* ''Questions for public comment'', *infra,* Section VII, #9).

D. Part 882: Moderate Rehabilitation

This proposed rule would revise the regulations governing the Moderate Rehabilitation Program, located in part 882, subpart E, to reflect the changes in part 5 above as they apply to the Moderate Rehabilitation program. As noted above, § 882.514(a)(2) would be revised to provide for transparency with respect to tenant selection policies.

1. Individualized Assessment

The proposed rule would make several changes to § 882.518. Paragraph (a)(1) would be redesignated as paragraph (2) and new paragraph (a)(1) would clarify that an arrest record alone may not be the basis for a determination that an individual has engaged in criminal activity that warrants denial of admission; however, the underlying conduct leading to an arrest may be relevant to determine the applicant's risk to engage in such conduct provided there is sufficient evidence independent of the arrest itself that the conduct occurred, and would require that where a criminal activity is determined to be relevant it must be considered alongside the factors in § 882.518(a)(1)(ii) and other relevant mitigating factors. Paragraph (a)(1)(ii) of this section would also provide the list of mitigating factors related to admissions from § 5.852(a)(1), which must be considered as part of an individualized assessment.

2. Admissions

The proposed rule would amend redesignated § 882.518(a)(2) by revising its title to cover drug-related criminal activity rather than ''drug criminals.'' To align with the revisions proposed to § 5.854, the language of § 882.518(a)(2)(A) and (B) would be revised to substitute ''substance use treatment service'' for ''approved supervised drug rehabilitation program'' (in (A)) and ''household member who engaged in the criminal activity'' for ''criminal household member'' (in (B)). This proposed revision is an expansion of the existing statutory provision that allows a PHA to nonetheless admit the household if, among other things, the household member who engaged in drug-related criminal activity and whose tenancy was terminated has successfully *completed* substance use treatment services.

HUD is also proposing changes to § 882.518(a)(2)(iii), which currently requires that a PHA establish standards that prohibit admission of a household to a PHA's program if the PHA determines that any household member is currently engaging in illegal use of a drug, or if the PHA determines that it has ''reasonable cause to believe'' that a household member's illegal use or pattern of illegal use of a drug ''may'' threaten the health, safety, or right to peaceful enjoyment of the premises by other residents. First, HUD proposes to delete the phrase ''that it has reasonable cause to believe'' to be consistent with the preponderance of the evidence standard used throughout these regulations. The proposed deletion would avoid confusion that these standards are different. Second, HUD proposes replacing the word ''may'' in this paragraph with ''would,'' to prevent

an overly broad reading of ''may'' in this context, which could lead to speculative admissions determinations HUD does not believe were intended by this language. Third, HUD is incorporating a cross-reference to the newly proposed definition of ''currently engaging in or engaged'' in § 5.100 to clarify when the applicant is currently engaging in the use of an illegal drug. Lastly, in this paragraph, HUD would add that any determination must take into account any relevant information submitted by the household, such as whether the household member is currently receiving or has successfully completed substance use treatment services.

Section 882.518(b)(1) addresses the authority a PHA has to deny admission on the basis of other criminal activity. The revisions proposed by this rule mirror those in § 5.585 and provide that a PHA may only deny admission based on criminal activity if it determines by a preponderance of the evidence that the individual is currently engaging in criminal activity or engaged in criminal activity during a reasonable time before the admission decision as those terms would be defined in § 5.100. Other criminal activity must be criminal activity that would actually threaten residents, owner, employee, contractor, subcontractor or agent of the owner who is involved in the owner's housing operations. Paragraph (b)(2) of this section, which provides that the PHA may prohibit admission based on criminal activity only for a reasonable time, would be revised to include the three-year presumptively reasonable lookback period previously discussed.

HUD proposes to revise § 882.518(b)(3) which would provide that except in those circumstances where a PHA solely relies on self-disclosure in reviewing an applicant's criminal record, the PHA may deny admission for failure to disclose a criminal record only if that criminal record would be material to an admissions decision pursuant to this rule and the PHA's or owner's admissions standards. HUD also proposes in § 882.518 to redesignate paragraph (b)(4) as paragraph (b)(5). New paragraph (b)(4) would explain that no applicant that was previously denied admission shall be prohibited from applying for assistance, and that PHAs may not deny applications based solely on prior denials. This section would be revised, in line with part 5, to provide that the fact that there has been an arrest is not a sufficient basis for the determination that the relevant individual engaged in criminal activity, but the conduct that resulted in the arrest can be such a basis provided there is sufficient evidence that it occurred independent of the fact of the arrest.

Redesignated paragraph (b)(5) currently requires a PHA to establish standards that prohibit admission on the basis of alcohol abuse. Like the changes in part 5, the proposed rule provides that the PHA must determine the applicant's abuse of alcohol would threaten the health, safety, or right to peaceful enjoyment of the premises of residents or PHA employees. Similarly, HUD proposes to make changes to paragraph (b)(1)(iv) which currently states that PHAs may prohibit admission of a household to a PHA's program if the PHA determines that any household member is currently engaging in, or has engaged in during reasonable time before the admission, other criminal activity which ''may'' threaten the health or safety of the owner or any employee, contractor, subcontractor or agent of the owner who is involved in the owner's housing operations. HUD proposes replacing the word ''may'' in this paragraph with ''would'' to prevent an overly broad reading of ''may'' in this context, which could lead to speculative admissions determinations HUD does not believe were intended by this language.

Redesignated paragraph (b)(6), consistent with part 5, subpart J, would provide that before a PHA denies admission based on criminal activity, it must notify the household of the proposed action and provide a copy of any relevant criminal record (except where otherwise prohibited by law) no less than 15 days prior to the denial, and expressly provides an equivalent protection to that proposed in § 5.851, that a criminal record may be considered only if it is accurate and relevant to determining the risk that an applicant would threaten the health, safety, or right to peaceful enjoyment of residents or PHA employees. The provision would provide an opportunity to dispute the accuracy and relevance of the criminal record and to present any mitigating evidence. In addition, paragraph (b)(6) would provide the list of mitigating factors related to admissions from § 5.852(a)(1), which must be considered as part of an individualized assessment, and this section would also provide that if the PHA decides to deny admission following the individualized assessment, the PHA must notify the family of its decision and that the family may request an informal hearing in accordance with § 882.514(f).

3. Denial and Terminations

New paragraph (c)(1) of § 882.518 proposes that for terminations or evictions, relevant factors that PHAs should consider under § 5.852(a)(2) include the nature and circumstances of the conduct in question, including seriousness and impact on fitness for continued tenancy; the effect on the community and on other household members not involved in the conduct of termination or eviction or of inaction; whether the leaseholder was involved in the conduct and whether they have taken reasonable steps to prevent or mitigate the conduct; whether, considering relevant evidence, there is reason to believe the conduct will recur and rise to the level that it will interfere with the health, safety, or right to peaceful enjoyment of the premises of other residents or property employees; whether the applicant would like the owner to consider mitigating circumstances related to a medical condition of a household member; and whether further considerations must be made in order to comply with the obligation to consider and provide reasonable accommodations to persons with disabilities.

The proposed rule would amend redesignated paragraph (c)(2) consistent with the changes in Part 5. Specifically, the proposed rule would revise the term ''drug criminals'' to ''drug-related criminal activity,'' change ''interferes with'' to ''threatens,'' specify when the text is discussing illegal drug use, add ''property employees'' to the list of individual whom a tenant's illegal drug use may threaten and give rise to cause to evict, allow the PHA to admit a household member who engaged in drug-related criminal activity if the person is participating in or has successfully completed a substance use treatment service, and reference the definition of ''currently engaging in or engaged in'' at § 5.100. Similar to the proposed revisions in § 882.518(a)(1), paragraph (d) would be revised in line with part 5, to provide that the fact that there has been an arrest is not a sufficient basis for the determination that the individual engaged in criminal activity, but the conduct that resulted in the arrest can be such a basis provided there is sufficient evidence that it occurred independent of the fact of the arrest.

The proposed rule would also revise §§ 882.511 and 882.514 to require that the owner follow § 882.519 for actions or potential actions to terminate tenancy, or deny tenancy on the basis of criminal activity, illegal drug use, of alcohol abuse. HUD proposes to remove in § 882.514(c) the provision that an owner may refuse any family, provided that the owner does not unlawfully discriminate. In addition, HUD would

revise § 882.514(a)(2) by clarifying that the PHA's tenant selection policies should be publicized by posting copies in each office where applications are received and by making available copies to applicants or tenants for free upon request. Paragraph (a)(2) would also clarify that these policies can be posted on the PHA's website and/or its social media account(s), in a conspicuous location and an accessible format, where applicable. Lastly, HUD proposes to revise § 882.514(f) by removing the outdated reference to the informal review provisions for the denial of a Federal selection preference under § 882.517(k).

The proposed rule would also add a new section, § 882.519. Proposed § 882.519(a) would reflect changes in part 5 by adding the requirement that where discretion exists to deny admission or terminate, an owner must consider certain circumstances listed in § 882.519 before doing so based on the following circumstances: a criminal record, a finding of criminal activity, illegal drug use, or alcohol abuse. In the admissions context, the considerations listed in § 882.519 must be considered as part of an individualized assessment. Section 882.519(a)(2) would require an individualized assessment in every instance an owner considers criminal activity in an admissions decision. Paragraph (a)(2)(i) of this section would provide that such criminal activity may be considered only if it is relevant to determining the risk that an applicant will interfere with or adversely affect the health, safety, or right to peaceful enjoyment of residents or property employees. Paragraphs (a)(2)(ii) and (iii) of this section would require that where a criminal activity is determined to be relevant, it must be considered alongside the factors in § 882.519(b) and other relevant mitigating factors, and that an arrest record alone may not be the basis for a determination that an individual has engaged in criminal activity that warrants denial of admission; however, the underlying conduct leading to an arrest may be relevant to determine the applicant's risk to engage in such conduct provided there is sufficient evidence independent of the arrest itself that the conduct occurred.

Like part 5, § 882.519(b)(1) would provide the list of mitigating factors related to admissions from § 5.852(a)(1), which must be considered as part of an individualized assessment. Paragraph (b)(2) of this section would list the circumstances relevant to a particular termination or eviction that an owner must take into account before exercising discretion to terminate or evict based on a criminal record, illegal drug use, or alcohol abuse. Proposed § 882.519(c) would give the owner discretion to exclude a household member that the owner determined, based on a preponderance of the evidence, participated in or was culpable for an action or failure to act that warrants denial or termination. In addition, HUD proposes to add § 882.519(d) which would provide that except in those circumstances where a PHA solely relies on self-disclosure in reviewing an applicant's criminal record, the PHA may deny admission for failure to disclose a criminal record only if that criminal record would be material to an admissions decision pursuant to this rule and the PHA's or owner's admissions standards.

Parallel to provisions proposed at §§ 5.855(B), 882.518(b)(2), 960.204(c)(2), and 982.553(a)(4)(ii)(B), HUD also proposes to add § 882.519(e) which would provide that an owner may establish a reasonable period of time (lookback period) before an admission decision during which an applicant must not have engaged in the activities enumerated in this paragraph. An owner would continue to exercise discretion in setting lookback periods; however, this rule proposes to place a limit on what HUD believes is a reasonable period of time, which is a period of time no longer than three years following any particular criminal activity. The proposed rule does not provide that three years will always be a reasonable period of time, only that a time longer than three years is presumptively unreasonable. A housing provider can, however, overcome this presumption and impose a longer period of time but only after a determination, based on empirical evidence, that a longer period of time is necessary to ensure the health, safety, and peaceful enjoyment of other tenants or property employees.

Section 882.519(e)(3) would be added to require that an owner provide notice of the proposed action and a copy of any relevant criminal record to the subject of the criminal record and the applicant (except where otherwise prohibited by law) no less than 15 days prior to a notification of denial. The notification must inform the household that it has the opportunity to dispute the accuracy and relevance of the criminal record as well as the opportunity to present any relevant mitigating information, which the housing provider must consider.

Lastly, § 882.518(e)(4) and (5) would be added to explain that no applicant that was previously denied admission shall be prohibited from applying for assistance, and that PHAs may not deny applications based solely on prior denials. This section would be added to align with part 5, to provide that the fact that there has been an arrest is not a basis for the requisite determination that the relevant individual engaged in criminal activity, but the conduct that resulted in the arrest can be such a basis provided there is sufficient evidence that it occurred independent of the fact of the arrest.

E. Part 960: Public Housing Program

This proposed rule would revise the regulations governing admission to the Public Housing Program, codified in part 960, to reflect the revisions in part 5.

The proposed rule would clarify, by adding a new § 960.103(e), that nothing in part 960 is intended to pre-empt operation of State and local laws that provide additional protections to those with criminal records, but that State and local laws shall not change or affect any HUD requirement for administration or operation of the program. The proposed rule would also redesignate § 960.202(c)(3) as (c)(4) and add language to new paragraph (c)(3) that would mirror the tenant selection policy transparency provision already discussed (see discussion of § 245.118(b)(1)).

The proposed rule would make several changes to § 960.203. Paragraph (b) of this section would remove an obsolete provision that PHAs that successfully screen out applicants with criminal histories would receive points under Public Housing Assessment System (PHAS). In addition to being obsolete, the former provision was fundamentally at odds with the purpose of this proposed rule. Paragraph (c) of this section would be redesignated as paragraph (b) and revised in several ways. Redesignated paragraph (b)(3)(i) currently provides that a PHA may require an applicant to exclude a household member from residing in the unit in order to be admitted to the housing program where that household member has participated in or been culpable for actions described in § 960.204 that warrant denial. HUD proposes to temper this provision by adding language limiting the duration of such exclusion to the time period an individual could be denied admission for that action or failure to act and requiring that the time period shall be reasonable in light of all relevant circumstances.

Existing paragraph (c)(3)(ii), which allows a PHA to prohibit admission for a period of time longer than that authorized by statute, is proposed for deletion for the reasons discussed earlier (see discussion of § 5.852(d)).

HUD proposes to replace it with a new paragraph (b)(3)(ii), which would be added to provide equivalent protections to those proposed in part 5 in the public housing regulations.

Existing paragraph (d) would be redesignated as paragraph (c) and would mirror the requirements of § 5.852(a)(1) with respect to admissions decisions on the basis of a criminal record. Finally, proposed new paragraph (d) would mirror the provision previously discussed at § 5.852(d) regarding an applicant's failure to disclose a criminal history.

The rule proposes several changes to § 960.204. HUD proposes to revise paragraph (a)(1)(i) of this section to clarify that a PHA may admit a household member evicted from federally assisted housing within three years of the date of the eviction if the PHA determines that the evicted household member is participating or has successfully completed substance use treatment services. HUD is proposing this revision in accordance with the waiver provision of 42 U.S.C. 13661(a), which does not require the bar when circumstances leading to the eviction no longer exist (which could include situations where the person who committed the drug offense leading to the eviction is in treatment). In addition, the Americans with Disabilities Act, prohibits public entities, such as PHAs, from discriminating against applicants with substance abuse disabilities who are not currently using illegal drugs and are currently participating in a supervised rehabilitation program, have successfully completed a supervised drug rehabilitation program, or have otherwise been rehabilitated successfully. 28 CFR 35.131; *see* 42 U.S.C. 12210.

HUD is also proposing changes to § 960.204(a)(2)(i) and (ii). These provisions currently require that a PHA establish standards that prohibit admission of a household to a PHA's program if the PHA determines that any household member is currently engaging in illegal use of a drug, or if the PHA determines that it has ''reasonable cause to believe'' that a household member's illegal use or pattern of illegal use of a drug ''may'' threaten the health, safety, or right to peaceful enjoyment of the premises by other residents. First, HUD is incorporating a cross-reference to the newly proposed definition of ''currently engaging in or engaged'' in § 5.100 to clarify when the applicant is currently engaging in the use of an illegal drug. HUD also proposes to delete the phrase ''that it has reasonable cause to believe.'' HUD is proposing this deletion because it believes it to be consistent with the preponderance of the evidence standard used throughout these regulations. The proposed deletion would avoid confusion that these standards are different. HUD also proposes replacing the word ''may'' in this paragraph with ''would,'' to prevent an overly broad reading of ''may'' in this context, which could lead to speculative admissions determinations HUD does not believe was intended by this language.

Similarly, HUD is proposing to revise § 960.204(b) by deleting the reasonable cause to believe standard and requiring a determination that a household member's abuse of alcohol would threaten others for the reasons already discussed (see discussion of § 5.857).

HUD proposes to insert a new § 960.204(c) in order to import a structure for permissive prohibition of admissions for criminal activities that is present in parts 882 and 982, but not currently in part 960. This proposed insertion also would provide a three-year presumptively reasonable lookback provision (see discussion of lookback periods under A.2 of this section).

Mirroring the revisions in subpart J, HUD is proposing to revise redesignated § 960.204(d) first, to expressly include a protection from part 5 (specifically, that a criminal record may be considered outside of the context of mandatory denials only if it is relevant to determining the risk that an applicant would threaten the health, safety, or right to peaceful enjoyment of residents or PHA employees) and second, to add additional detail to the notification requirements and to make clear that including a brief explanation regarding why the record may be relevant to the PHA's admission decision is part of what it means to provide an opportunity to dispute the accuracy and relevance of that record.

The proposed rule would make a minor revision to § 960.205; specifically, HUD proposes to include a cross reference to the definition of ''currently engaging in or engaged in'' at § 5.100.

F. Part 966: Lease Requirements

Part 966, subpart A, ''Public Housing Lease and Grievance Procedure,'' provides the requirements PHAs must include in their public housing leases and procedures governing the grievance process. This proposed rule would make several changes to this subpart to ensure that public housing lease terms and the hearing procedures are consistent with the principles and regulatory changes in parts 5, 960 and 982. HUD also proposes an edit to § 966.4(l)(2)(iv)(A) to correct an erroneous cross-reference.

HUD proposes a number of changes to § 966.4(l), which addresses termination of tenancy and eviction. In § 966.4(l)(3), which governs lease termination notices, HUD is proposing only slight non-substantive wording changes. These changes would clarify that the timeframes in these regulations specify the outer time limits for such notice to be provided and emphasize that the notice that must be provided within these timeframes must be ''adequate.'' At (l)(3)(ii), the regulation currently requires PHAs to ''state specific grounds for termination'' in the lease termination notice. While PHAs should already be including the specific lease provision at issue as part of stating the specific grounds for termination, the proposed language at 966.4(l)(3)(ii) would add language ''and the specific lease provision at issue'' to make explicit this requirement.

HUD also proposes to revise paragraph (l)(5)(iii) of this section, which deals with termination of tenancy on the basis of criminal activity, to incorporate the preponderance of the evidence standard discussed earlier to make clear that the fact of an arrest is not a basis for termination.

This proposed rule would remove existing paragraph (l)(5)(vii)(A), which provides that PHAs that successfully screen out applicants with criminal histories would receive points under PHAS, for the reasons previously discussed (see discussion of § 960.203(b) with respect to the removal of this language). HUD would revise paragraphs (l)(5)(vii)(A) and (B) to provide that a PHA may consider all circumstances relevant to a particular case. Again, mirroring part 5, the proposed rule would revise this paragraph to provide that an exclusion must be based on a preponderance of the evidence and that the duration of any exclusion must not exceed the time period an individual could be denied admission based on the same action or failure to act. The duration shall also be reasonable in light of all relevant circumstances, including but not limited to the excluded household member's age and relationship to other household members. In addition, the amendments would provide that such an exclusion may not be based solely on the fact of an arrest, though the conduct underlying an arrest may provide the basis for an exclusion. Likewise, the proposed rule would remove paragraph (l)(5)(vii)(D), which lists mitigating factors already discussed and paragraph (E), which allows extension of a statutory period of exclusion, for the same reasons discussed earlier regarding § 5.852(d). Redesignated paragraph

(1)(5)(vii)(C) would be revised to clarify that admission and eviction actions must also be consistent with 24 CFR part 5, subpart L.

Finally, the proposed rule would revise paragraph (m) to provide that the cost of copying any document in the PHA's possession that is directly relevant to a termination or eviction is on the PHA, and not the tenant. Additionally, HUD proposes to require the PHA to provide such copy at the PHA's expense. HUD proposes to make a similar revision to § 966.56(b)(1).

G. Part 982: Housing Choice Voucher Program

This proposed rule would revise the regulations governing admission to and continued occupancy in the Housing Choice Voucher Program, located in part 982, to incorporate and reflect the changes in part 5 above.

The proposed rule would make a slight revision to § 982.53(d), to make it clear that State or local laws that provide additional protections to those with criminal records are among the laws that are not preempted by part 982. The proposed rule would revise § 982.54(b) to add language regarding transparency of tenant selection plans.

The proposed rule would amend § 982.301(b)(4), which governs the information required to be supplied to a family selected for tenancy, to require that the family be informed of the fact that a receiving PHA may not rescreen a family that moves under the portability procedures. The proposed revision includes a cross-reference to § 982.355(c)(9), where this requirement is proposed to be codified.

The proposed rule would amend § 982.306(c)(3), which currently provides that a PHA may disapprove an owner if the owner has engaged in any drug related or violent criminal activity but does not specify when that activity must have taken place. HUD proposes to add the requirement that a PHA may disapprove an owner only if the owner is currently engaging in the activity or has engaged in the activity during a reasonable time before the decision regarding approval. The rule would also make clear that a PHA may disapprove an owner for other criminal activity that would threaten the health, safety, or right to peaceful enjoyment of residents or PHA employees occurring during a reasonable time before the decision regarding approval.

The proposed rule would also amend § 982.306(c)(5), which currently allows a PHA to deny an owner based on the owner's history or practice of failing to terminate tenancies based on certain criminal activity of that tenant. The proposed language provides that a PHA may deny approval of an owner if the owner has a history or practice of refusing after an appropriate request from the PHA to take action to terminate certain tenancies. HUD believes this more limited authority better comports with the underlying statutory language, which authorizes the disapproval of an owner ''who refuses, or has a history of refusing,'' to take such action, 42 U.S.C. 1437f(o)(6)(C), as well as HUD's concern that owners not feel obligated to evict where they do not believe eviction is warranted and no one has asked them to do so.

1. PHA Admissions and Terminations Generally (§ 982.552)

This proposed rule would make several targeted changes to § 982.552, which deals with PHAs' denial of admission or termination of assistance for a family generally. These proposed changes affect denials of admission or termination of assistance on grounds of criminal activity, illegal use of drugs, or alcohol abuse, and do not affect preexisting PHA discretion to deny admission or terminate assistance for other reasons.

Section 982.552(c)(1) allows PHAs to deny admission or terminate assistance on various grounds. HUD would revise paragraph (c)(1) to remove the words ''at any time'', which are superfluous to the section. HUD would also revise paragraph (c)(1)(v) to clarify that money owed that is subject to a payment agreement in good standing is not grounds for denial or termination of assistance.

Paragraph (c)(2)(i) of this section would be revised to require that with respect to those grounds that involve criminal activity, illegal drug use, and alcohol abuse, the requirements at § 982.553(a) and (b), which explicitly require the consideration of various mitigating circumstances, apply. Paragraph (c)(2)(ii) of this section would also be revised to clarify that a PHA's authority to exclude an adult family member who participated in the criminal activity may not extend beyond a longer time than they would otherwise be denied admission for the same conduct. HUD proposes to remove paragraph (c)(2)(iii), because this paragraph is incorporated into the considerations of mitigating circumstances. Finally, HUD proposes to add § 982.552(c)(2)(v) to make explicit that a PHA may temporarily stay a termination hearing while criminal case proceedings for the underlying activity are pending.

2. Admissions (§§ 982.307 and 982.553)

The proposed rule would make several targeted revisions to § 982.307, which deals with tenant screening for the Housing Choice Voucher program. Section 982.307(a)(1) would be updated to provide that any PHA screenings of tenants must be conducted in accordance with §§ 982.552 and 982.553, which will be discussed in more detail below. Paragraph (a)(3) would be updated to provide that any owner screenings of tenants must be conducted in accordance with the Fair Housing Act. Paragraph (a)(3)(iv) would be revised to clarify that ''violent criminal activity'' is a type of criminal activity that must be screened for. In terms of the information a PHA may offer an owner about a family, paragraph (b)(2) would be revised to limit such information to information about the tenancy history of family members.

The proposed rule would also make several changes to § 982.553, which deals with when a PHA may deny admission on the basis of criminal activity, illegal drug use, or alcohol abuse. HUD proposes to insert a new paragraph (a)(1), which would expressly provide an equivalent protection to that proposed in part 5 with respect to the use of criminal records.

HUD also proposes to insert a new paragraph (a)(2) requiring individualized assessment of relevant circumstances before denying admissions based on a criminal record, criminal activity, illegal drug use, or alcohol abuse, as discussed further in the above discussion on part 5.

HUD's proposed revisions to § 982.553 build on § 982.552, as discussed above. HUD would amend § 982.553(a)(2) (paragraph (a)(3) in this proposed rule) which addresses prohibiting admission on the basis of being evicted from federally assisted housing for drug related criminal activity. Specifically, HUD proposes new language at paragraph (a)(2)(i)(A) (paragraph (a)(3)(i)(A) in this proposed rule) that would clarify that the PHA is not required to prohibit admission for those who are currently enrolled in substance use treatment services, consistent with parallel changes to other program regulations explained above.

§ 982.553(a)(3)(ii)(A) of this proposed rule would be revised to point to the definition of ''currently engaging in or engaged in'' in § 5.100 for determining if an individual is currently engaging in the illegal use of a drug. Paragraph (a)(2)(ii)(B) of this section (paragraph (a)(3)(ii)(B) in this proposed rule) currently allows a PHA to admit a household member that has been

evicted from federally assisted housing for drug-related criminal activity, if the PHA determines that it has ''reasonable cause to believe'' that a household member's illegal drug use or pattern of illegal use of a drug ''may'' threaten the health, safety, or right to peaceful enjoyment of the premises by other residents. HUD proposes to add ''or PHA employees'' and to delete the phrase ''that it has reasonable cause to believe'' to be consistent with the preponderance of the evidence standard used throughout these regulations. The proposed deletion would avoid confusion that these standards are different.

Additionally, consistent with changes in other parts, HUD proposes removing the word ''may'' in proposed § 982.553(a)(3)(ii)(B) and (a)(4)(ii)(A)(*3*) and (*4*) to remove the speculative nature of the standard.

Proposed § 982.553(a)(4)(ii)(B) would be revised to provide, as discussed earlier, that a period of time longer than three years for a PHA to prohibit admission based on criminal activity is presumptively unreasonable and that a PHA may impose a longer prohibition period only after a PHA determination based on empirical evidence that a longer period it is necessary for the health, safety, and right to peaceful enjoyment of the premises of other residents or PHA employees.

The language of redesignated § 982.553(a)(4)(ii)(C) would be revised to make it clear that no applicant that was previously denied admission based on criminal activity shall be prohibited from applying for assistance, and that a PHA must not deny the application based solely on the prior denial. HUD proposes to remove § 982.553(a)(2)(ii)(C)(*1*) and (*2*) of the current regulation. These paragraphs are unnecessary with the addition of new paragraphs (a)(1) and (2). Finally, § 982.553(a)(4)(ii)(C)(*1*) of this proposed rule would be revised to remove the ''reasonable cause'' standard, consistent with changes discussed above.

HUD is also proposing changes to § 982.553(d)(1), which provides procedural requirements for admissions denials in reliance on a criminal record. In such cases, the PHA must notify the family of the initial denial determination in accordance with the procedures in § 982.554. The notice must include a copy of the criminal record at issue (except where otherwise prohibited by law) and an explanation of why the record is relevant, and it must provide the family at least 15 days to request an informal hearing. The proposed revisions would further provide that before a PHA denies admission on the basis of criminal activity, the PHA must provide the household an opportunity to present any relevant mitigating information and expressly sets out the same factors discussed earlier for admissions in § 5.852(a). Finally, proposed paragraph (d)(1)(ii) would allow that while a PHA is determining whether there are grounds for denial of assistance based on criminal activity, the PHA cannot issue a voucher to the family, enter into a HAP contract or approve a lease, or process or provide assistance under the portability procedures.

3. Terminations/Evictions (§§ 982.310, 982.553, 982.555)

PHAs

Section 982.553(b) lists requirements for when a PHA may terminate tenancy on the basis of criminal activity, illegal drug use, or alcohol abuse. Amendments to this paragraph build on § 982.552, as discussed in this preamble. HUD proposes several revisions to § 982.553(b) to refer to ''drug related criminal activity'' rather than ''drug criminals'' and ''alcohol abuse'' rather than ''alcohol abusers.''

Section 982.553(c) addresses evidence of criminal activity that can be considered when determining admission and terminations for criminal activity, illegal drugs use or alcohol abuse. HUD proposes to revise paragraph (c) to expressly provide protections equivalent to those proposed for part 5.

The proposed rule would also revise § 982.555, which addresses the informal hearing process for terminations. HUD proposes to retain the requirement in paragraph (e)(2)(i) that the family must be allowed to copy or receive a copy of any documents directly relevant to the hearing but would clarify that this includes the information that the PHA relied upon to make its initial termination. Paragraph (e)(2)(i) would also be further revised, consistent with earlier discussions, to require that the copying of such documents must be done at the PHA's expense.

Owners

The proposed rule would make several targeted revisions to § 982.310, which governs the circumstances under which an owner may terminate a tenancy. These revisions apply only to circumstances in which the termination is for criminal activity, illegal drug use, or alcohol abuse, as authorized by the HAP lease addendum. The purpose of these proposed revisions is not to unduly regulate HCV landlords' eviction procedures generally; rather, they are targeted to apply only when they evict pursuant to these specialized HUD rules for criminal activity.

Consistent with other proposed revisions made in order to provide express protections equivalent to those proposed for part 5, § 982.310(c)(3) would be revised to require an owner's determination that a tenant engaged in criminal activity to be made on a preponderance of the evidence and would also provide that the fact of an arrest is not a basis to determine that the individual engaged in criminal activity warranting termination of tenancy or eviction. The proposed rule would also add a sentence to § 982.310(c)(3) that would provide that an owner may terminate tenancy and evict by judicial action based on the conduct underlying an arrest if the conduct indicates that the individual is not suitable for tenancy and the owner has sufficient evidence other than the fact of arrest that the individual engaged in the conduct.

Section 982.310(h)(1), which addresses owner termination of tenancy decisions, is proposed to be revised to amend certain mitigating factors that an owner may require. As proposed to be modified, owners may consider the nature and circumstances of the conduct in question, including the seriousness of the offense and the extent to which it bears on fitness for continued tenancy; the effect on the community of eviction or of the failure of the owner to take such action; the extent of participation by the leaseholder in the conduct; the effect of eviction on household members not involved in the conduct; and the extent to which the leaseholder has taken reasonable steps to prevent or mitigate the offending action.

HUD would insert a new paragraph (h)(2) to apply to circumstances where termination is based on criminal activity, illegal drug use or alcohol abuse, and would provide that in these cases an owner may consider any relevant circumstances described in proposed paragraph (h)(1) and may also consider whether the relevant circumstances provide reason to believe such conduct will recur and rise to the level that it may interfere with the health, safety, or right to peaceful enjoyment of the premises by others and whether the leaseholder would like the owner to consider mitigating circumstances related to a medical condition of a household member.

HUD would revise redesignated paragraph (h)(3) to add the preponderance of the evidence standard discussed elsewhere, and to note that the fact that there has been an arrest alone is not a basis for a determination

of culpability in the absence of other independent evidence.

HUD would remove current paragraph (h)(3), which is incorporated into proposed paragraph (h)(2).

3. Portability (§§ 982.301 and 982.355)

The proposed rule would make changes to §§ 982.301(b)(4) and 982.355(c)(9) to provide that a family that moves under the portability procedures may not be rescreened by the receiving PHA. HUD specifically seeks comment on these provisions and if there should be limited exceptions for statutorily mandated denials in cases where the incoming family has not yet been admitted to the program (*i.e.,* the family was issued a voucher and chose to move under portability immediately without first leasing a unit in the jurisdiction of the initial PHA), as well as on the broader question of under what circumstances, if any, rescreening of tenants for criminal activity is appropriate (*see* ''Questions for public comment'', *infra,* Section VII, #8).

H. Treatment of HCV/PBV Owners

Under the HCV program, the PHA is responsible for determining the family's eligibility for admission to the program. Where eligibility is established, the PHA issues a voucher to the family, which commences the family's housing search; if the family finds a unit and the owner is willing to lease the unit to the family under the program, the family may request PHA approval of the tenancy.

The screening and selection of the family for the unit, as distinct from program eligibility, is the function of the owner. If the owner is unwilling to lease the unit to the family, the family may continue their housing search during the term of the voucher. The program regulations at § 982.307(a)(2) and (3) provide the owner is responsible for the screening of families based on their tenant histories and that an owner may consider a family's background with respect to factors such as respecting the rights of other residents to the peaceful enjoyment of their housing and drug-related criminal activity or other criminal activity that is a threat to the health, safety or property of others. In the PBV program, the PHA refers an eligible family to the owner for an available PBV unit, but as with HCV the owner remains responsible for screening and selection of the family to occupy the owner's unit.

HUD strongly encourages owners participating in or considering participation in the HCV or the PBV programs to conduct an individualized assessment or otherwise take mitigating circumstances into consideration with respect to their screening procedures related to criminal records for all the reasons previously discussed in this preamble. The proposed rule would not impose additional requirements with respect to owner screening for criminal activity. This is because, except in limited specific circumstances, there is no federal statutory requirement that owners must accept a voucher and participate in the HCV program or make their units available for PBV assistance. Such a requirement may have the unintended consequence of discouraging owners from considering any HCV family for their unit because consideration would trigger screening requirements and restrictions that would not be required of the owner with respect to unassisted prospective tenants. Likewise, owners may be discouraged from considering the PBV program if, as a condition of making their housing available, the owner's right to screen prospective tenants would be limited by, or subject to, additional requirements. HUD notes owners in the HCV and PBV programs are subject to the Fair Housing Act, which prohibits screening that has an unjustified discriminatory effect on any protected class, as well as all applicable state or local laws related to the consideration of criminal records and the use of criminal records, including limitations on inquiries, restrictions on lookback periods, and requirements to consider mitigating factors prior to denying a rental application on such basis.

HUD is seeking specific comment on the issue of owner screening requirements for the HCV and PBV programs with respect to criminal records and criminal activity (*see,* ''Questions for public comment'', *infra,* section VII, #10).

I. Severability

It is HUD's intention that the provisions of the proposed rule shall operate independently of each other. In the event that this rule or any portion of this rule is ultimately declared invalid or stayed as to a particular program, it is HUD's intent that the rule nonetheless be severable and remain valid with respect to those programs not at issue. Additionally, it is HUD's intention that any provision(s) of the rule not affected by a declaration of invalidity or stayed shall be severable and remain valid. HUD concludes it would separately adopt all of the provisions contained in this proposed rule.

VII. Questions for Public Comment

HUD welcomes comments on all aspects of this proposed rule. In addition, HUD specifically requests comments on the following topics:

Question for comment #1: ''*Currently engaging in* or *engaged in*.'' The proposed rule would provide that, for purposes of determining whether criminal activity that may be the basis for termination or eviction is ''current,'' a PHA or owner may not rely solely on criminal activity that occurred 12 months ago or longer to establish that behavior is ''current.'' Should HUD establish such a rule and, if so, is less than 12 months an appropriate timeframe?

Question for comment #2: Lookback period for criminal activity. The proposed rule would provide that it is presumptively unreasonable for PHAs and owners to consider convictions that occurred more than three years ago in making admissions decisions. This is based in part on research on recidivism that indicates that people's risk of committing a crime drops precipitously after the person has not reoffended for a period of three years. The proposed rule would provide, however, that this presumption can be overcome based on evidence that, with respect to specific crimes, older convictions are relevant to individualized assessments of current suitability for tenancy.

2a. Is three years the appropriate time period for this presumption? Are there specific crimes for which a longer lookback period should be considered? If so, what are those crimes, how long of a lookback period would be recommended, and what is the supporting rationale? In general, what should HUD consider to be adequate ''empirical evidence'' that, for a specified crime of conviction, would overcome the presumption that a lookback period of longer than three years is unreasonable?

2b. By the same token, are there certain offenses for which a lookback period that exceeds three years may be presumptively unreasonable? HUD seeks specific comment on all aspects of the proposal to presumptively but not conclusively cap the lookback period for any given offense at three years.

Question for comment #3: Opportunity to dispute criminal records relied upon by PHA or owner (Denials). The proposed rule would provide that PHAs and owners provide applicants with relevant criminal records no fewer than 15 days prior to notification of a denial of admission, as well as an opportunity to dispute the accuracy and relevance of the records relied upon. Is

15 days prior to notification of a denial of admission an appropriate timeframe? Do the processes described in §§ 5.855(c), 882.518, 960.204, and 982.553 adequately balance the needs of applicants and housing providers? If not, what additional processes or measures would be helpful?

Question for comment #4: Mitigating factors. The proposed rule would provide that PHAs and owners consider the following set of mitigating factors when a decision to deny or terminate assistance or to evict is predicated on consideration of a criminal record: the facts or circumstances surrounding the criminal conduct, the age of the individual at the time of the conduct, evidence that the individual has maintained a good tenant history before and/or after the criminal conviction or the criminal conduct, and evidence of rehabilitation efforts. Are there other mitigating factors that should be considered? Should HUD define these mitigating factors in greater detail in regulation or guidance? Please provide suggested definitions or standards.

Question for comment #5: Justifying denial of admissions. The proposed rule would provide that criminal activity in the past can be the basis for denying admission only if it would threaten the health, safety, or right to peaceful enjoyment of the premises by other residents or PHA/property employees. Should HUD provide additional specificity in the rule or in subsequent guidance on this requirement, and if so, on what aspects?

Question for comment #6: Ensuring consistency of tenant selection plan. The proposed rule would amend 24 CFR part 5 to add a new section, § 5.906. Proposed § 5.906(a) would require an owner of federally assisted housing as defined at § 5.100, other than an owner of a property receiving tenant-based assistance and project-based voucher and moderate rehabilitation owners, to amend the tenant selection plan required by § 5.655 within six months after the effective date of the final rule to ensure its consistency with §§ 5.851 through 5.905. HUD seeks comment on whether the six months proposed for amendment of the tenant selection plan is reasonable.

Question for comment #7: Evidence relating to exclusions. The proposed rule would require housing providers who exclude a household member to apply a ''preponderance of the evidence'' standard when determining whether the household member participated in or was culpable for an action or failure to act that warrants denial or termination. This proposal would address the need for housing providers to have a uniform standard with which to evaluate evidence underlying decisions that affect a tenant's or prospective tenant's future housing opportunities. What makes evidence generally reliable in this context? Should HUD provide further guidance as to the use of evidence in this regulation or in subregulatory guidance?

Question for comment #8: Rescreening of tenants for criminal activity. At §§ 982.301 and 982.355, HUD proposes to prohibit the receiving PHA from rescreening a family that moves under the portability procedures of the HCV program (including for criminal activity). HUD is aware that there are other circumstances under which a PHA or an owner might rescreen a tenant for criminal activity, and HUD would like to consider the issue of rescreening for criminal activity in a comprehensive manner. As such, HUD specifically seeks comment from PHAs and owners on whether there are circumstances under which rescreening a tenant for criminal activity is appropriate, and if so, an explanation of the precise circumstances and reasons therefore. Specifically, for those PHAs and owners who rescreen, under what circumstances do you rescreen after an initial screening, how often do you conduct such rescreening, how long have you been conducting such rescreening, on approximately how many tenants/participants, and what has been the results of your rescreening? Specifically, has your rescreening then led to any evictions or terminations? If so, how many, what were the specific offenses for which they were evicted, what was the case outcome for those offenses, and when did the offense occur in relation to the eviction or termination? Other than the offense in question, were there other concerning factors raised by the tenant/participant? Do you believe your rescreening serves a legitimate purpose? For all members of the public, how, if at all, should HUD address comments about rescreening in the final rule?

Question for comment #9: Owner responses to tenant comments on tenant selection plans. Proposed revisions to 24 CFR 245.115(b)(3) would give tenants the right to comment on proposed changes to the tenant selection plan, with or without the help of tenant representatives, and submit them to the owner and to the local HUD office. Should owners be required to respond to comments received from tenants on proposed changes to the tenant selection plan prior to finalizing those changes? If so, what is a reasonable time frame for an owner to respond?

Question for Comment #10: Screening Requirements for HCV and PBV Owners. As noted earlier, HUD is requesting comments on owner screening requirements for the HCV and PBV programs with respect to criminal records and criminal activity. Specifically, should HUD establish the same or similar requirements for HCV and/or PBV owners as proposed for owners under part 5? If not, what, if any, requirements should be established for denials on the basis of criminal records, current or recent criminal activity, illegal drug use, or alcohol abuse?

HCV Owners: Should an owner participating in or considering participating in the HCV program be required, as opposed to encouraged, to conduct an individualized assessment before refusing to rent their unit to an HCV family based on criminal activity? Likewise, should there be restrictions on an owner's screening in terms of a lookback period for criminal activity? How would such restrictions apply, and what would be the mechanism and the enforcement action, if any, that a PHA would be responsible for taking in such instances? Would any additional requirements adversely impact owner participation in the HCV program and to what extent? Are there other approaches short of regulatory requirements that would encourage HCV owners or potential HCV owners to adopt such practices voluntarily?

PBV Owners: Should the criminal activity screening requirements be more extensive for or exclusively applied to PBV owners as opposed to HCV owners? For example, what aspects of the PBV program, which are generally similar to other HUD project-based assistance, should HUD consider to either continue to treat it more like HCV or rather, apply the requirements proposed in this rule.

Question for public comment #11: Continued use of the term ''alcohol abuse''. As discussed in the preamble, this proposed rule continues the use of the statutory term ''alcohol abuse'' when describing the relevant potential disqualifying circumstances related to alcohol. HUD seeks public comment on the continued use of the term and whether there are alternative, less pejorative, and/or more current terms that could replace ''alcohol abuse''.

VIII. Findings and Certifications

Regulatory Review (Executive Orders 12866, 13563, and 14094)

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and,

therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are ''outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.'' Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. Executive Order 14094 entitled ''Modernizing Regulatory Review'' (hereinafter referred to as the ''Modernizing E.O.'') amends section 3(f) of Executive Order 12866 (Regulatory Planning and Review), among other things.

The proposed rule would revise 24 CFR parts 5, 245, 882, 960, 966, and 982 to amend existing regulations that govern admission for applicants with criminal history, and for evicting or terminating assistance of persons on the basis of illegal drug use, drug-related criminal activity, or other criminal activity. HUD believes, consistent with Executive Order 13563, that this proposed rule would reduce unnecessary exclusions from HUD programs while allowing providers to maintain the safety of their residents, staff, and communities. The proposed rule is also intended to reduce the risk of PHAs and owners violating nondiscrimination laws. This rule was determined to be a ''significant regulatory action'' as defined in Section 3(f) of Executive Order 12866. HUD has prepared an initial regulatory impact analysis and has assessed the potential costs and benefits, both quantitative and qualitative, of this proposed regulatory action and has determined that the benefits would justify the costs. The analysis is available at *www.regulations.gov* and is part of the docket file for this rule.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This proposed rule does not impose any federal mandates on any State, local, or Tribal governments, or on the private sector, within the meaning of UMRA.

Environmental Review

A Finding of No Significant Impact 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 *http://www.regulations.gov*.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This proposed rule would impact Public Housing and Multifamily housing by increasing access for individuals with criminal records in need of affordable housing. Under current regulations, PHAs and owners already are authorized to, and often do, conduct a review of criminal histories in connection with admissions and eviction decisions. This proposed rule would provide clear guidance and requirements on how to do that to ensure that providers are relying only on relevant information that indicates an actual threat to health, safety or quiet enjoyment of the premises; and not relying on irrelevant information, *e.g.,* arrest records, outdated criminal records, or inaccurate or insufficient information.

The proposed rule would ensure that individual assessments consider relevant information and that housing providers make decisions based on the preponderance of the evidence of criminal activity; that individuals that are denied admission or evicted because of criminal history are provided with notice and access to the records, as well as the opportunity to dispute inaccurate information; and that these changes be adopted in tenant selection plans, tenant lease documents, and PHA policies.

HUD estimates the number of small entities for PHAs as 2,102. At this time, HUD is unable to provide an accurate estimate of small PBRA owners because we do not always know whether there is a corporate structure behind an individual owner. There are 158 PBRA owners at a minimum that are sole proprietorships or tenancies in common, which are likely small entities. Since the costs of the rule are expected to be minimal (average upfront costs of $120 per PHA and $184 per PBRA owner, and average annual costs of $185 per PHA and $69 per private owner), the proposed rule is not expected to have a significant impact on small entities. Additionally, HUD believes that this proposed rule would benefit small entities equal to or even more than larger entities by providing clarification on how these individual assessments should be applied.

HUD recognizes that there is one aspect of the proposed rule that has the potential to impose some costs on some providers of federally-assisted housing—the proposed new requirement that the PHA furnish copies of relevant documents to applicants or tenants wishing to challenge an admission or termination decision based on a criminal history at the PHA's expense. HUD does not consider that this would amount to a substantial economic impact. HUD expects that, even where furnishing copies of documents would be required, the incremental material costs (paper, copier machine wear and tear, etc.) and costs attributable to personnel time would not rise to the level of a substantial economic impact.

Accordingly, it is HUD's determination that this proposed rule would not have a significant economic impact on a substantial number of small entities. Notwithstanding HUD's determination that this proposed rule would not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this proposed rule that would meet HUD's objectives as described in this preamble.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has Federalism implications if the rule either imposes substantial direct compliance costs on State and local governments or is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule would not have Federalism implications and would not impose substantial direct compliance costs on State and local governments or preempt state law within the meaning of the Executive Order.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid

control number. The information collection requirements contained in this proposed rule are still being finalized for HUD to submit to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and the proposed rule would either update or create a new information collection with an assigned an OMB control number.

The proposed rule would clarify that PHAs must include in their lease termination notices the specific lease provisions and specific criminal activity at issue, a copy of the criminal record at issue, and a description of why the criminal record may be relevant to the PHA's admission decision. HUD estimates that this would require a one-time revision to lease termination notices (''program termination notices'' for HCV). Additionally, PHAs would be required to provide a copy of all relevant PHA documents when providing a notification of denial. Currently, this information in part is available by request, so this proposed rule would extend the amount of information PHAs would need to make available. However, HUD is seeking comment on how this could be balanced against confidentiality of records and burden on PHAs to provide information that may not be needed.

PHAs and owners would also be required to revise leases one time in order to include provisions on what grounds a PHA or owner has to terminate tenancy on the basis of drug-related criminal activity or illegal drug use. The proposed rule would also require owners to revise their tenant selection plans to ensure consistency with the amended 24 CFR part 5 and notify tenants of the proposed substantive changes. HUD is still finalizing the overall reporting and recordkeeping burden, but the estimates are as follows:

Description of information collection	Number of responses	Responses per year	Total annual responses	Hours per response	Total hours
PBRA and PIH Leases	26,242	1	26,242	.5	13,121
PBRA and PIH Notices	26,242	1	26,242	2	52,484
Tenant Selection Plans	26,242	1	26,242	1.5	39,363
Copy of Records	4,000	1	4,000	.5	2,000

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning the information collection requirements in the proposed rule regarding:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Whether the proposed collection of information enhances the quality, utility, and clarity of the information to be collected; and

(4) Whether the proposed information collection minimizes the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses).

Interested persons are invited to submit comments regarding the information collection requirements in this rule. The proposed information collection requirements in this rule have been submitted to OMB for review under section 3507(d) of the Paperwork Reduction Act. Under the provisions of 5 CFR part 1320, OMB is required to make a decision concerning this collection of information between 30 and 60 days after the publication date. Therefore, a comment on the information collection requirements is best assured of having its full effect if OMB receives the comment within 30 days of the publication. This time frame does not affect the deadline for comments to the agency on the proposed rule. Comments must refer to the proposed rule by name and docket number (FR–6085) and must be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Fax number: 202–395–6947 and Colette Pollard, HUD Reports Liaison Officer, U.S. Department of Housing and Urban Development, 451 7th Street SW, Room 2204, Washington, DC 20410.

Interested persons may submit comments regarding the information collection requirements electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *http://www.regulations.gov* website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

List of Subjects

24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Crime, Government contracts, Grant programs—housing and community development, Individuals with disabilities, Intergovernmental relations, Loan programs—housing and community development, Low- and moderate-income housing, Mortgage insurance, Penalties, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

24 CFR Part 245

Condominiums, Cooperatives, Grant programs—housing and community development, Loan programs—housing and community development, Low- and moderate-income housing, Rent subsidies, Reporting and recordkeeping requirements, Utilities.

24 CFR Part 882

Grant programs—housing and community development, Homeless, Lead poisoning, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 960

Aged, Grant programs—housing and community development, Individuals with disabilities, Pets, Public housing.

24 CFR Part 966

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 982

Grant programs—housing and community development, Grant programs—Indians, Indians, Public

housing, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, HUD proposes to amend 24 CFR parts 5, 245, 882, 960, 966, and 982 as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

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

Authority: 12 U.S.C. 1701x; 42 U.S.C. 1437a, 1437c, 1437f, 1437n, 3535(d); Sec. 327, Pub. L. 109–115, 119 Stat. 2396; Sec. 607, Pub. L. 109–162, 119 Stat. 3051 (42 U.S.C. 14043e *et seq.*); E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 258; E.O. 13559, 75 FR 71319, 3 CFR, 2010 Comp., p. 273; E.O 13831, 83 FR 20715, 3 CFR, 2018 Comp., p. 806; 42 U.S.C. 2000bb *et seq.*

Subpart A—Generally Applicable Definitions and Requirements; Waivers

■ 2. Amend § 5.100 by adding in alphabetical order definitions for ''Criminal history'', ''Criminal record'', ''Currently engaging in or engaged in'', ''Individualized assessment'', and ''Preponderance of the evidence'' to read as follows:

§ 5.100 Definitions.

* * * * *

Criminal history means an individual's past involvement with the criminal justice system, including but not limited to that reflected in a criminal conviction. Criminal history may include information that appears in an individual's criminal record (as defined in this section) but may also include information that is not part of that individual's criminal record.

Criminal record means a history of an individual's contacts with law enforcement agencies or the criminal justice system. A criminal record may include details of warrants, arrests, convictions, sentences, dismissals or deferrals of prosecution, acquittals or mistrials pertaining to an individual, probation, parole, and supervised release terms and violations, sex offender registry status and fines and fees.

Currently engaging in or *engaged in* means, with respect to behavior such as illegal use of a drug, other drug-related criminal activity, or other criminal activity, that the individual has engaged in the behavior recently enough to justify a reasonable belief that the individual's behavior is current. Any finding that an individual is currently engaging or engaged in behavior must satisfy the preponderance of the evidence standard and must take into account any relevant contrary evidence, such as evidence that the individual has successfully completed substance use treatment services with no evidence of recurrence. In the absence of evidence to the contrary, conduct that occurred 12 months or longer before the determination date does not support a determination that an individual is currently engaging in or engaged in the conduct at issue.

* * * * *

Individualized Assessment, where required by these regulations, is a process by which an applicant is evaluated for admission to a federally assisted housing program. The point of an individualized assessment is to determine the risk that an applicant will engage in conduct that would adversely affect the health, safety, and peaceful enjoyment of the premises by other residents, the owner, or property employees. An individualized assessment requires consideration of multiple points of information that may include general tenancy history, criminal record, criminal activity, including drug-related criminal activity, alcohol abuse, or other specified activity together with consideration of relevant mitigating factors, including but not limited to those set forth at § 5.852(a)(1) and (2).

* * * * *

Preponderance of the evidence means, when taking all the evidence together and considering its reliability or unreliability, it is more likely than not that a claim is true.

* * * * *

Subpart I—Preventing Crime in Federally Assisted Housing—Denying Admission and Terminating Tenancy for Criminal Activity or Alcohol Abuse

■ 3. Revise § 5.851 to read as follows:

§ 5.851 What authority do I have to screen applicants and to terminate tenancy?

(a) *Screening applicants.* (1) You are authorized to screen applicants for the programs covered by this part and in general may deny admission to applicants you determine are unsuitable under your standards for admission. However, any finding of unsuitability that is based on a criminal record, a finding of criminal activity, illegal drug use, or alcohol abuse must be in accord with the procedures and standards set out in this subpart. Criminal histories of applicants and their household members may be considered only in the manner and for the purposes described in this regulation.

(2) Except in those circumstances where a statute requires you to deny admission based on criminal history, any reliance on criminal activity in admissions decisions is not permitted without an individualized assessment.

(i) If a criminal activity is determined relevant, it must be considered alongside the factors set forth at § 5.852(a) and other relevant mitigating factors.

(ii) An arrest record alone may not be the basis for a determination that an individual has engaged in criminal activity that warrants denial of admission. The actions that resulted in the arrest could be relevant to determine the applicant's risk to engage in such conduct provided there is sufficient evidence independent of the arrest that the actions occurred.

(b) *Terminating tenancy.* You are authorized to terminate tenancy of tenants, in accordance with your leases and State landlord-tenant law for the programs covered by this part. The provisions of this subpart implement statutory directives that either require or permit you to terminate tenancy under certain circumstances on the basis of criminal activity, illegal drug use, or alcohol abuse, as provided in 42 U.S.C. 1437f, 1437n, and 13662. Any termination based on criminal activity, illegal drug use, or alcohol abuse must be in accordance with the procedures and requirements of this subpart. You retain authority to terminate tenancy on any basis that is otherwise authorized.

■ 4. Revise § 5.852 to read as follows:

§ 5.852 What factors should I consider in determining the relevance of criminal records, criminal activity, drug use, or alcohol abuse in screening, termination, and eviction actions?

(a) *General*—(1) *Admissions.* If the law and regulation permit you to deny admission but do not require denial of admission based on a criminal record, criminal history, a finding of criminal activity, illegal drug use, or alcohol abuse, you may take or not take the action in accordance with your standards for admission. Before denying admission on the basis of a criminal record, criminal activity, illegal drug use, or alcohol abuse, you must conduct an individualized assessment that takes into account circumstances relevant to a particular admission decision. The circumstances relevant to a particular admission decision include but are not limited to:

(i) The nature and circumstances of the conduct in question, including the seriousness of the offense, the extent to which it bears on suitability for tenancy, and the length of time that has passed since the conduct;

(ii) The extent to which the applicant or relevant household member has taken

actions to mitigate the risk that admission of the individual would adversely affect the health, safety, and peaceful enjoyment of the premises by other residents, the owner, or property employees (*e.g.,* evidence of post-conviction rehabilitation, treatment/recovery, employment, housing history);

(iii) Whether the applicant would like the owner to consider mitigating circumstances related to a medical condition of a household member (which then must be considered);

(iv) Whether the relevant circumstances provide reason to believe such conduct will recur and rise to the level that it may interfere with the health, safety, or right to peaceful enjoyment of the premises by others. In making this determination, you must consider relevant evidence, which may include evidence provided by the household that a household member has successfully completed substance use treatment services or has been otherwise rehabilitated successfully along with evidence that the illegal use of a controlled substance or abuse of alcohol (as applicable) has not recurred. For this purpose, you may require the applicant to submit evidence of the household member's current participation in, or successful completion of, substance use treatment services or that the household member is otherwise in recovery from drug use or alcohol abuse; and

(v) Whether further considerations must be made in order to comply with the obligation to consider and provide reasonable accommodations to persons with disabilities. A reasonable accommodation may include, for example, disregarding the conduct or record if it was disability-related.

(2) *Terminations and evictions.* If the law and regulation permit you to terminate assistance or evict but do not require you to do so based on criminal record, or a finding of criminal activity, illegal drug use, or alcohol abuse, you may take or not take the action in accordance with your standards for termination or eviction. Before exercising your discretion to terminate assistance or evict based on criminal record, or a finding of criminal activity, illegal drug use, or alcohol abuse, you must take into account all the circumstances relevant to a particular termination or eviction. The circumstances relevant to a particular termination or eviction may include but are not limited to:

(i) The nature and circumstances of the conduct in question, including the seriousness of the offense and the extent to which it bears on fitness for continued tenancy;

(ii) The effect on the community of termination or eviction; or of the failure of the responsible entity to take such action;

(iii) The extent of participation by the leaseholder in the conduct;

(iv) The effect of termination of assistance or eviction on household members not involved in the conduct;

(v) The extent to which the leaseholder or relevant household member has taken reasonable steps to prevent or mitigate the offending action;

(vi) Whether the relevant circumstances provide reason to believe such conduct will recur and rise to the level that it may interfere with the health, safety, or right to peaceful enjoyment of the premises by others. In making this determination you must consider relevant evidence, which may include evidence provided by the household that a household member has successfully completed substance use treatment services or has been otherwise rehabilitated successfully along with evidence that the illegal use of a controlled substance or abuse of alcohol (as applicable) has not recurred. For this purpose, you may require the applicant to submit evidence of the household member's current participation in, or successful completion of, substance use treatment services or that the household member is otherwise in recovery from drug use or alcohol abuse;

(vii) Whether the leaseholder would like the owner to consider mitigating circumstances related to a medical condition of a household member (which then must be considered); and

(viii) Whether further considerations must be made in order to comply with the obligation to consider and provide reasonable accommodations to persons with disabilities. A reasonable accommodation may include, for example, disregarding the conduct or record if it was disability-related.

(b) *Exclusion of culpable household member.* You may require an applicant (or tenant) to exclude a household member from residing in the unit in order to be admitted to the housing program (or continue to reside in the assisted unit), if you determine that household member has participated in or been culpable for, based on a preponderance of the evidence, action or failure to act that warrants denial (or termination). The fact that there has been an arrest is not a basis for the requisite determination that the relevant individual participated in or was culpable for the action or failure to act, but the conduct that resulted in the arrest can be such a basis provided there is sufficient evidence that it occurred independent of the fact of the arrest. The duration of any such exclusion shall not extend beyond the time period an individual could be denied admission for that action or failure to act and shall be reasonable in light of all relevant circumstances, including but not limited to the excluded household member's age and relationship to other household members.

(c) *Nondiscrimination limitation.* Your admission, termination, and eviction actions must be consistent with the fair housing and equal opportunity provisions of § 5.105 and subpart L of this part. HUD standards for nondiscrimination requirements extend to third-party screening services or companies contracted by you.

(d) *Effect of failure to disclose criminal record.* Except where an owner solely relies on self-disclosure in reviewing an applicant's criminal record, the owner may deny admission for failure to disclose criminal record only if that criminal record would be material to an admissions decision pursuant to this rule and the owner's admissions standards.

■ 5. Amend § 5.853 by:

■ a. Revising paragraph (a); and

■ b. Removing from paragraph (b) the definition of ''Currently engaging in''.

The revision reads as follows:

§ 5.853 Definitions

(a) *Terms found elsewhere.* The following terms are defined in subpart A of this part: 1937 Act, covered person, currently engaging in or engaged in, drug, drug-related criminal activity, federally assisted housing, guest, household, HUD, other person under the tenant's control, premises, preponderance of the evidence, public housing, public housing agency (PHA), Section 8, violent criminal activity.

* * * * *

■ 6. Amend § 5.854 by revising the section heading and paragraphs (a)(1) and (2) and (b)(2) to read as follows:

§ 5.854 When must I prohibit admission of individuals who have engaged in drug-related criminal activity and illegal drug use?

(a) * * *

(1) The evicted household member who engaged in drug-related criminal activity is participating in or has successfully completed substance use treatment services; or

(2) The circumstances leading to the eviction no longer exist (for example, the household member who engaged in the drug-related criminal activity has died or is imprisoned).

(b) * * *

(2) You determine that you have reasonable cause to believe that a

household member's illegal use or a pattern of illegal use of a drug threatens the health, safety, or right to peaceful enjoyment of the premises by other residents or property employees.

■ 7. Revise and republish § 5.855 to read as follows:

§ 5.855 When may I prohibit admission of individuals who have engaged in criminal activity?

(a) You may prohibit admission of a household or household member to federally assisted housing on the basis of criminal activity only if you determine that the household member is currently engaging in, or has engaged in during a reasonable time before the admission decision:

(1) Drug-related criminal activity;

(2) Violent criminal activity;

(3) Other criminal activity that would threaten the health, safety, or right to peaceful enjoyment of the premises by other residents; or

(4) Other criminal activity that would threaten the health or safety of the PHA or owner or any employee, contractor, subcontractor or agent of the PHA or owner who is involved in the housing operations.

(b) You may establish a period before the admission decision during which an applicant must not have engaged in the activities specified in paragraph (a) of this section (reasonable time). However, prohibiting admission for a period of time longer than three years following any particular criminal activity, including prior terminations from HUD-assisted housing for drug-related criminal activity, is presumptively unreasonable. An owner may impose a longer prohibition based on particular criminal activity only after a determination, based on empirical evidence, that such longer prohibition is necessary to ensuring the health, safety, and peaceful enjoyment of other tenants or property employees.

(c) Before you prohibit admission on the basis of criminal activity you must notify the household of the proposed action and provide a copy of any relevant criminal record to the subject of the record and the applicant (except where otherwise prohibited by law) no less than 15 days prior to notification of the denial. During the 15-day period, you must provide the household and the subject of any record an opportunity to dispute the accuracy and relevance of that record. You must provide the household the opportunity to present, and you must take into consideration, any relevant mitigating information, which may include but is not limited to the factors set forth at § 5.852(a)(1)(i) through (v).

(d) All determinations to deny admission on the basis of criminal activity must be supported by a preponderance of the evidence. The fact that there has been an arrest for a crime is not a basis for the requisite determination that the relevant individual engaged in criminal activity, but the conduct that resulted in the arrest can be such a basis provided there is sufficient evidence that it occurred independent of the fact of the arrest.

(e) No applicant that was previously denied admission because of a determination concerning a member of the household under paragraph (a) of this section shall be prohibited from applying for assistance. An owner must not deny the application based solely on the prior denial.

■ 8. Revise § 5.857 to read as follows:

§ 5.857 When must I prohibit admission on the basis of alcohol abuse?

You must establish standards that prohibit admission to federally assisted housing if you determine that a household member's abuse or pattern of abuse of alcohol would threaten the health, safety, or right to peaceful enjoyment of the premises by other residents or property employees.

■ 9. Revise § 5.858 to read as follows:

§ 5.858 What authority do I have to evict tenants on the basis of drug-related criminal activity and illegal drug use?

(a) *Drug-related criminal activity.* The lease must provide that drug-related criminal activity engaged in on or near the premises by any tenant, household member, or guest, and any such activity engaged in on the premises by any other person under the tenant's control, is potential grounds for you to terminate tenancy.

(b) *Illegal drug use.* In addition, the lease must allow you to evict a family when you determine that a household member is illegally using a drug or when you determine that a pattern of illegal use of a drug threatens the health, safety, or right to peaceful enjoyment of the premises by other residents or property employees.

■ 10. Amend § 5.859 by revising the section heading to read as follows:

§ 5.859 When am I specifically authorized to evict tenants on the basis of other criminal activity?

* * * * *

■ 11. Amend § 5.860 by revising the section heading to read as follows:

§ 5.860 When am I specifically authorized to evict on the basis of alcohol abuse?

* * * * *

■ 12. Revise § 5.861 to read as follows:

§ 5.861 What evidence of criminal activity must I have to evict?

You may terminate tenancy and evict the tenant through judicial action for criminal activity by a covered person in accordance with this subpart if you determine that the covered person has engaged in the criminal activity described in §§ 5.858 and 5.859.

Subpart J—Access to and Use of Criminal Records and Information

■ 13. Revise the heading for subpart J to read as set forth above.

■ 14. Amend § 5.901 by revising paragraph (a) to read as follows:

§ 5.901 To what criminal records and searches does this subpart apply?

(a) *General criminal records searches.* This subpart applies when criminal records are obtained from a law enforcement agency under the authority of section 6(q) of the 1937 Act (42 U.S.C. 1437d(q)) or from another source for consideration in admission, lease enforcement, termination, or eviction decisions. PHAs and owners are not required to review criminal records beyond the extent necessary to satisfy statutory requirements.

* * * * *

■ 15. Amend § 5.903 by:

■ a. Revising paragraph (f); and

■ b. Removing the words ''from a law enforcement agency'' in paragraph (g) introductory text.

The revision reads as follows:

§ 5.903 What special authority is there to obtain access to criminal records?

* * * * *

(f) *Opportunity to dispute*—(1) *Action by PHA.* If a PHA obtains criminal record information from a State or local agency under either paragraph (a) of this section or pursuant to a request by an owner under paragraph (d) of this section showing that a household member has been involved in a crime relevant to applicant screening, lease enforcement or eviction, the PHA must notify the household of the proposed action to be based on the information and must provide the subject of the record and the applicant or tenant (except where otherwise prohibited by law) a copy of the criminal record, and an opportunity to dispute the accuracy and relevance of the information. This opportunity must be provided at least 15 days before a denial of admission, eviction or lease enforcement action on the basis of such information.

(2) *Action by owner.* If an owner of federally assisted housing as defined at § 5.100, other than an owner of a property receiving tenant-based assistance, obtains criminal record

information from any source other than a PHA, such as a third-party screening company relevant to applicant screening, lease enforcement, or eviction, the owner must notify the household of the proposed action to be based on the information and must provide the subject of the record and the applicant or tenant a copy of such information, and an opportunity to dispute the accuracy and relevance of the information prior to any denial of admission, lease enforcement action, or eviction. This opportunity must be provided at least 15 days before a denial of admission, eviction, or lease enforcement action on the basis of such information.

* * * * *

■ 16. Amend § 5.905 by revising paragraph (d) to read as follows:

§ 5.905 What special authority is there to obtain access to sex offender registration information?

* * * * *

(d) *Opportunity to dispute*—(1) *Action by PHA.* If a PHA obtains sex offender registration information under paragraph (a) of this section or pursuant to a request by an owner under paragraph (b) of this section showing that a household member is subject to a lifetime sex offender registration requirement, the PHA must notify the household of the proposed action to be based on the information and must provide the subject of the record, and the applicant or tenant, with a copy of such information, and an opportunity to dispute the accuracy of the information. This opportunity must be provided at least 15 days before a denial of admission, eviction or lease enforcement action on the basis of such information.

(2) *Action by owner.* If an owner of federally assisted housing as defined at § 5.100, other than an owner of a property receiving tenant-based assistance, obtains sex offender registration information from any source other than a PHA showing that a household member is subject to a lifetime sex offender registration requirement, the owner must notify the household of the proposed action to be based on the information and must provide the subject of the record, and the applicant or tenant, with a copy of such information, and an opportunity to dispute the accuracy of the information. This opportunity must be provided at least 15 days before a denial of admission, eviction or lease enforcement action on the basis of such information.

■ 17. Add § 5.906 to subpart J to read as follows:

§ 5.906 Ensuring consistency of tenant selection plans.

(a) An owner of federally assisted housing as defined at § 5.100 that is required to have a written tenant selection plan shall amend such plan to ensure its consistency with §§ 5.851 through 5.905 and with any non-conflicting state or local law providing protections for people with criminal records. The tenant selection plan must include any changes to policies and procedures related to termination of tenancy as well as admissions, and any changes related to criminal background checks conducted by the owner to ensure compliance with these regulations.

(b) An owner may not consider the existence of a criminal record in the admission process or in the termination of tenancy process except as specified in these regulations.

PART 245—TENANT PARTICIPATION IN MULTIFAMILY HOUSING PROJECTS

■ 18. The authority citation for part 245 continues to read as follows:

Authority: 12 U.S.C. 1715z–1b; 42 U.S.C. 3535(d).

■ 19. Amend § 245.115 by:
■ a. Redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively;
■ b. Adding new paragraph (b);
■ c. Removing in newly redesignated paragraph (c) the text ''paragraph (a)'' and adding in its place the text ''paragraphs (a) and (b)''; and
■ d. Removing in newly redesignated paragraph (d) the text ''paragraphs (a) and (b)'' and adding in its place the text ''paragraphs (a) through (c)''.

The addition reads as follows:

§ 245.115 Protected Activities

* * * * *

(b)(1) Owners of multifamily housing projects covered under § 245.10 must publicize their tenant selection policies by posting copies thereof in each office where applications are received and by making available copies to applicants or tenants for free upon request. An owner may satisfy this requirement by posting its selection policies or its documents containing these policies on its website and/or its social media account(s), in a conspicuous location and an accessible format, where applicable.

(2) The tenants (including any legal or other representatives acting for tenants individually or as a group) must be notified of proposed substantive changes to the tenant selection plan, which shall include any substantive changes to termination of tenancy or criminal background check policies and procedures for applicants and existing tenants, and must have the right to inspect and copy such changes for a period of 30 days after notification of the proposed change(s). During this period, the owner must provide a place (as specified in the notice) reasonably convenient to tenants in the project where tenants and their representatives can inspect and copy these materials during normal business hours.

(3) The tenants have the right during this period to submit written comments on the proposed tenant selection plan change(s) to the owner and to the local HUD office. Tenant representatives may assist tenants in preparing these comments.

* * * * *

PART 882—SECTION 8 MODERATE REHABILITATION PROGRAMS

■ 20. The authority citation for part 882 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

■ 21. Amend § 882.511 by:
■ a. Removing in paragraph (e) the misspelled word ''judical'' and adding in its place the word ''judicial''; and
■ b. Adding paragraph (h).

The addition reads as follows:

§ 882.511 Lease and termination of tenancy.

* * * * *

(h) In actions or potential actions to terminate tenancy on the basis of criminal activity, illegal drug use, or alcohol abuse, the owner shall follow § 882.519.

■ 22. Amend § 882.514 by:
■ a. Redesignating paragraph (a)(2) as (a)(3) and adding a new paragraph (a)(2); and
■ b. Revising and republishing paragraphs (c) and (f).

The addition and revisions read as follows:

§ 882.514 Family participation.

* * * * *

(a) * * *

(2) The PHA's tenant selection policies shall be publicized by posting copies thereof in each office where applications are received and by making available copies to applicants or tenants for free upon request. The PHA may satisfy this requirement by posting its selection policies or its documents containing these policies on its website and/or its social media account(s), in a conspicuous location and an accessible format, where applicable.

* * * * *

(c) *Owner selection of families.* All vacant units under Contract must be rented to Eligible Families referred by

the PHA from its waiting list. However, if the PHA is unable to refer a sufficient number of interested applicants on the waiting list to the Owner within 30 days of the Owner's notification to the PHA of a vacancy, the Owner may advertise or solicit applications from Low-Income Families and refer such Families to the PHA to determine eligibility. The Owner is responsible for tenant selection; however, the owner must not deny program assistance or admission to an applicant based on the fact that the applicant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the applicant otherwise qualifies for assistance or admission. The Owner must follow the procedures outlined in § 882.519 if the reason for the Owner's denial is based on criminal activity, illegal drug use, or alcohol abuse. Should the Owner reject a Family, and should the Family believe that the Owner's rejection was the result of unlawful discrimination, the Family may request the assistance of the PHA in resolving the issue. If the issue cannot be resolved promptly, the Family may file a complaint with HUD, and the PHA may refer the Family to the next available Moderate Rehabilitation unit.

* * * * *

(f) *Families determined by the PHA to be ineligible.* If a Family is determined to be ineligible in accordance with the PHA's HUD-approved application, either at the application stage or after assistance has been provided on behalf of the Family, the PHA shall promptly notify the Family by letter of the determination and the reasons for it and the letter shall state that the Family has the right within a reasonable time (specified in the letter) to request an informal hearing. If, after conducting such an informal hearing, the PHA determines, based on a preponderance of the evidence, that the Family is ineligible, it shall notify the Family in writing. The procedures of this paragraph do not preclude the Family from exercising its other rights if it believes it is being discriminated against on the basis of race, color, religion, sex, age, handicap, familial status, or national origin. The informal hearing requirements for denial and termination of assistance on the basis of ineligible immigration status are contained in 24 CFR part 5.

■ 23. Revise § 882.518 to read as follows:

§ 882.518 Denial of admission and termination of assistance on the basis of criminal record, criminal activity, illegal drug use, and alcohol abuse.

(a) *Requirement to deny admission*—(1) *Relevant circumstances and individualized assessment.* (i) If the law and regulation permit the PHA to deny admission but do not require denial of admission based on a criminal record, criminal history, a finding of criminal activity, illegal drug use, or alcohol abuse, the PHA may take or not take the action in accordance with the PHA standards for admission. All determinations to deny admission on the basis of criminal activity must be supported by a preponderance of the evidence. An arrest record alone may not be the basis for a determination that an individual has engaged in criminal activity that warrants denial of admission. The actions that resulted in the arrest could be relevant to determine the applicant's risk to engage in such conduct provided there is sufficient evidence independent of the arrest that the actions occurred and must be considered alongside the factors set forth at paragraph (a)(1)(ii) of this section and other relevant mitigating factors.

(ii) Before denying admission on the basis of a criminal record, criminal activity, illegal drug use, or alcohol abuse, the PHA must conduct an individualized assessment that takes into account circumstances relevant to a particular admission decision. A criminal record may be considered in the individualized assessment only if it is relevant to determining the risk that an applicant would threaten the health, safety, or right to peaceful enjoyment of residents or PHA employees. The circumstances relevant to a particular admission decision include but are not limited to:

(A) The nature and circumstances of the conduct in question, including the seriousness of the offense, the extent to which it bears on suitability for tenancy, and the length of time that has passed since the conduct;

(B) The extent to which the applicant or relevant household member has taken actions to mitigate the risk that admission of the individual would adversely affect the health, safety, and peaceful enjoyment of the premises by other residents, the owner, or property employees (*e.g.,* evidence of post-conviction rehabilitation, treatment/recovery, employment, housing history; treatment of a medical condition of a household member);

(C) Whether the applicant would like the PHA to consider mitigating circumstances related to a medical condition of a household member (which then must be considered);

(D) Whether the relevant circumstances provide reason to believe such conduct will recur and rise to the level that it may interfere with the health, safety, or right to peaceful enjoyment of the premises by others. In making this determination, the PHA must consider relevant evidence, which may include evidence provided by the household that a household member has successfully completed substance use treatment services or has been otherwise rehabilitated successfully along with evidence that the illegal use of a controlled substance or abuse of alcohol (as applicable) has not recurred. For this purpose, the PHA may require the applicant to submit evidence of the household member's current participation in, or successful completion of, substance use treatment services or that the household member is otherwise in recovery from drug use or alcohol abuse; and

(E) Whether further considerations must be made in order to comply with the obligation to consider and provide reasonable accommodations to persons with disabilities. A reasonable accommodation may include, for example, disregarding the conduct or record if it was disability-related.

(2) *Prohibiting admission on the basis of drug-related criminal activity.* (i) The PHA must prohibit admission to the program of an applicant for three years from the date of termination of tenancy if any household member's federally assisted housing tenancy has been terminated for drug-related criminal activity. However, the PHA may admit the household if the PHA determines:

(A) The household member who engaged in drug-related criminal activity and whose tenancy was terminated is participating in or has successfully completed substance use treatment services; or

(B) The circumstances leading to the termination of tenancy no longer exist (for example, the household member who engaged in the criminal activity has died or is imprisoned).

(ii) The PHA must establish standards that permanently prohibit admission to the program if any household member has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing.

(iii) The PHA must establish standards that prohibit admission of a household to the program if the PHA determines that any household member is currently engaging in illegal use of a drug or that a household member's pattern of illegal use of a drug, as

defined in 24 CFR 5.100, would threaten the health, safety, or right to peaceful enjoyment of the premises by other residents or property employees (*see* definition of ''*Currently engaging in* or *engaged in*'' at 24 CFR 5.100). Any determination whether a pattern of illegal use meets this standard must take into account any relevant information submitted by the household, such as whether the household member is currently receiving or has successfully completed substance use treatment services.

(3) *Prohibiting admission of sex offenders.* The PHA must establish standards that prohibit admission to the program if any member of the household is subject to a lifetime registration requirement under a State sex offender registration program. In this screening of applicants, the PHA must perform criminal history background checks necessary to determine whether any household member is subject to a lifetime sex offender registration requirement in the State where the housing is located and in other States where household members are known to have resided.

(b) *Authority to deny admission*—(1) *Prohibiting admission on the basis of other criminal activity.* The PHA may prohibit admission of a household to the program on the basis of criminal activity only if the PHA determines, based on a preponderance of the evidence, that any household member is currently engaged in or has engaged in during a reasonable time before the admission decision (see definition of ''*Currently engaging in* or *engaged in*'' at 24 CFR 5.100):

(i) Drug-related criminal activity;

(ii) Violent criminal activity;

(iii) Other criminal activity that would threaten the health, safety, or right to peaceful enjoyment of the premises by other residents; or

(iv) Other criminal activity that would threaten the health or safety of the owner or any employee, contractor, subcontractor or agent of the owner who is involved in the owner's housing operations.

(2) *Reasonable time.* The PHA may establish a period before the admission decision during which an applicant must not have engaged in the activities specified in paragraph (b)(1) of this section (''reasonable time''). However, prohibiting admission for a period of time longer than three years following any particular criminal activity, including prior terminations from HUD-assisted housing for drug-related criminal activity, is presumptively unreasonable. A PHA or owner may impose a longer prohibition based on particular criminal activity only after a PHA determination, based on empirical evidence, that such longer prohibition is necessary to ensuring the health, safety, and right to peaceful enjoyment of the premises by other tenants or property employees.

(3) *Effect of failure to disclose criminal record.* Except where a PHA solely relies on self-disclosure in reviewing an applicant's criminal record, the PHA may deny admission for failure to disclose criminal record only if that criminal record would be material to an admissions decision pursuant to this rule and the PHA's or owner's admissions standards.

(4) *Previous denial.* No applicant that was previously denied admission based on criminal activity shall be prohibited from applying for assistance. A PHA must not deny the application based solely on the prior denial.

(5) *Prohibiting admission on the basis of alcohol abuse.* The PHA must establish standards that prohibit admission to the program if the PHA determines that a household member's abuse or pattern of abuse of alcohol may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents or PHA employees.

(6) *Notification requirements.* Before a PHA denies admission on the basis of criminal activity, the PHA must notify the household of the proposed action and provide a copy of any relevant criminal record to the subject of the record and the applicant (except where otherwise prohibited by law) no less than 15 days prior to notification of the denial. During the 15-day period, the PHA must provide the subject of any record an opportunity to dispute the accuracy and relevance of that record. The PHA must provide the household an opportunity to present, and must consider as part of an individualized assessment, any relevant mitigating information which may include but is not limited to the circumstances listed in paragraph (a)(1)(ii) of this section. If the PHA decides to deny admission following the individualized assessment, the PHA must notify the family of its decision and that the family may request an informal hearing in accordance with § 882.514(f).

(c) *Terminating assistance*—(1) *General.* If the law and regulation permit the PHA to terminate assistance or evict but does not require the PHA to do so based on criminal record, criminal activity, illegal drug use, or alcohol abuse, the PHA may take or not take the action to terminate assistance in accordance with the PHA standards for termination. Before exercising the PHA's discretion to terminate assistance based on criminal record, a finding of criminal activity, illegal drug use, or alcohol abuse, the PHA must take into account all the circumstances relevant to a particular termination. The circumstances relevant to a particular termination may include but are not limited to:

(i) The nature and circumstances of the conduct in question, including the seriousness of the offense and the extent to which it bears on fitness for continued tenancy;

(ii) The effect on the community of termination or eviction; or of the failure of the responsible entity to take such action;

(iii) The extent of participation by the leaseholder in the conduct;

(iv) The effect of termination of assistance or eviction on household members not involved in the conduct;

(v) The extent to which the leaseholder or relevant household member has taken reasonable steps to prevent or mitigate the offending action;

(vi) Whether the relevant circumstances provide reason to believe such conduct will recur and rise to the level that it may interfere with the health, safety, or right to peaceful enjoyment of the premises by others. In making this determination the PHA must consider relevant evidence, which may include evidence provided by the household that a household member has successfully completed substance use treatment services or has been otherwise rehabilitated successfully along with evidence that the illegal use of a controlled substance or abuse of alcohol (as applicable) has not recurred. For this purpose, the PHA may require the applicant to submit evidence of the household member's current participation in, or successful completion of, substance use treatment services or that the household member is otherwise in recovery from drug use or alcohol abuse;

(vii) Whether the leaseholder would like the PHA to consider mitigating circumstances related to a medical condition of a household member (which then must be considered); and

(viii) Whether further considerations must be made in order to comply with the obligation to consider and provide reasonable accommodations to persons with disabilities. A reasonable accommodation may include, for example, disregarding the conduct or record if it was disability-related.

(2) *Terminating assistance*—(i) *Terminating assistance on the basis of drug-related criminal activity or illegal drug use.* (A) The PHA may terminate assistance for drug-related criminal activity engaged in on or near the premises by any tenant, household

member, or guest, and any such activity engaged in on the premises by any other person under the tenant's control. The PHA may terminate assistance if the PHA determines that a household member is illegally using a drug or when the PHA determines that a pattern of illegal use of a drug threatens the health, safety, or right to peaceful enjoyment of the premises by other residents or PHA employees.

(B) The PHA must immediately terminate assistance for a family under the program if the PHA determines that any member of the household has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing.

(ii) *Terminating assistance for other criminal activity.* (A) The PHA must establish standards that allow the PHA to terminate assistance for a family if the PHA determines that any household member is engaged in criminal activity that threatens the health, safety, or right of peaceful enjoyment of the premises by other residents or by persons residing in the immediate vicinity of the premises.

(B) The PHA may terminate assistance for a family if the PHA determines that a member of the household is:

(*1*) Fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or attempt to commit a crime, that is a felony under the laws of the place from which the individual flees, or that, in the case of the State of New Jersey, is a high misdemeanor; or

(*2*) Violating a condition of probation or parole imposed under Federal or State law.

(3) *Evidence of criminal activity.* (i) The PHA may terminate assistance for criminal activity in accordance with this section if the PHA determines, based on a preponderance of the evidence, that the household member has engaged in the criminal activity. The fact that there has been an arrest for a crime is not a basis for the requisite determination that the relevant individual engaged in criminal activity warranting termination but the conduct that resulted in the arrest can be such a basis provided there is sufficient evidence that it occurred independent of the fact of the arrest.

(ii) See 24 CFR part 5, subpart J, for provisions concerning access to criminal records.

(4) *Terminating assistance on the basis of alcohol abuse.* The PHA must establish standards that allow termination of assistance for a family if the PHA determines that a household member's abuse or pattern of abuse of alcohol threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

(d) The fact that there has been an arrest for a crime is not a basis for the requisite determination that the relevant individual engaged in criminal activity, but the conduct that resulted in the arrest can be such a basis provided there is sufficient evidence that it occurred independent of the fact of the arrest.

■ 24. Add § 882.519 to subpart E to read as follows:

§ 882.519 Owner denial or termination of tenancy on the basis of criminal activity, illegal drug use, or alcohol abuse.

(a) *Owner screening and terminations.* (1) The owner may screen applicants for suitability in accordance with § 882.514(c). However, any finding of unsuitability that is based on a criminal record, a finding of criminal activity, illegal drug use, or alcohol abuse must be in accord with the procedures and standards set out in this section. Criminal histories of applicants and their household members may be considered only in the manner and for the purposes described in this this section.

(2) Any reliance on criminal activity in screening decisions is not permitted without an individualized assessment.

(i) Criminal activity may be considered in the individualized assessment only if it is relevant to determining the risk that an applicant would threaten the health, safety, or right to peaceful enjoyment of residents or property employees.

(ii) If a criminal activity is determined relevant, it must be considered alongside the factors set forth at paragraph (b) of this section and other relevant mitigating factors.

(iii) An arrest record alone may not be the basis for a determination that an individual has engaged in criminal activity that warrants denial. The actions that resulted in the arrest could be relevant to determine the applicant's risk to engage in such conduct provided there is sufficient evidence independent of the arrest that the actions occurred and must be considered alongside the factors set forth at paragraph (b) of this section and other relevant mitigating factors.

(3) Any owner termination of tenancy based on criminal activity, illegal drug use, or alcohol abuse must be in accordance with the procedures and requirements of this section.

(b) *Mitigating circumstances and individualized assessment*—(1) *Relevant circumstances and individualized assessment.* Before denying admission on the basis of a criminal record, criminal activity, illegal drug use, or alcohol abuse, the owner must conduct an individualized assessment that takes into account circumstances relevant to a particular admission decision. The circumstances relevant to a particular admission decision include but are not limited to:

(i) The nature and circumstances of the conduct in question, including the seriousness of the offense, the extent to which it bears on suitability for tenancy, and the length of time that has passed since the conduct;

(ii) The extent to which the applicant or relevant household member has taken actions to mitigate the risk that admission of the individual would adversely affect the health, safety, and peaceful enjoyment of the premises by other residents, the owner, or property employees (*e.g.,* evidence of post-conviction rehabilitation, treatment/recovery, employment, housing history; treatment of a medical condition of a household member);

(iii) Whether the applicant would like the owner to consider mitigating circumstances related to a medical condition of a household member (which then must be considered);

(iv) Whether the relevant circumstances provide reason to believe such conduct will recur and rise to the level that it may interfere with the health, safety, or right to peaceful enjoyment of the premises by others. In making this determination, the owner must consider relevant evidence, which may include evidence provided by the household that a household member has successfully completed substance use treatment services or has been otherwise rehabilitated successfully along with evidence that the illegal use of a controlled substance or abuse of alcohol (as applicable) has not recurred. For this purpose, the owner may require the applicant to submit evidence of the household member's current participation in, or successful completion of, substance use treatment services or that the household member is otherwise in recovery from drug use or alcohol abuse; and

(v) Whether further considerations must be made in order to comply with the obligation to consider and provide reasonable accommodations to persons with disabilities. A reasonable accommodation may include, for example, disregarding the conduct or record if it was disability-related.

(2) *Terminations of tenancy.* Before the owner exercises discretion to terminate the tenancy or evict based on criminal record, illegal drug use, or alcohol abuse, the owner must take into account all the circumstances relevant to a particular termination or eviction.

The circumstances relevant to a particular termination or eviction may include but are not limited to:

(i) The nature and circumstances of the conduct in question, including the seriousness of the offense and the extent to which it bears on fitness for continued tenancy;

(ii) The effect on the community of termination or eviction; or of the failure of the responsible entity to take such action;

(iii) The extent of participation by the leaseholder in the conduct;

(iv) The effect of termination of assistance or eviction on household members not involved in the conduct;

(v) The extent to which the leaseholder or relevant household member has taken reasonable steps to prevent or mitigate the offending action;

(vi) Whether the relevant circumstances provide reason to believe such conduct will recur and rise to the level that it may interfere with the health, safety, or right to peaceful enjoyment of the premises by others. In making this determination the owner must consider relevant evidence, which may include evidence provided by the household that a household member has successfully completed substance use treatment services or has been otherwise rehabilitated successfully along with evidence that the illegal use of a controlled substance or abuse of alcohol (as applicable) has not recurred. For this purpose, the owner may require the applicant to submit evidence of the household member's current participation in, or successful completion of, substance use treatment services or that the household member is otherwise in recovery from drug use or alcohol abuse;

(vii) Whether the leaseholder would like the owner to consider mitigating circumstances related to a medical condition of a household member (which then must be considered); and

(viii) Whether further considerations must be made in order to comply with the obligation to consider and provide reasonable accommodations to persons with disabilities. A reasonable accommodation may include, for example, disregarding the conduct or record if it was disability-related.

(c) *Exclusion of culpable household member.* The owner may require an applicant (or tenant) to exclude a household member from residing in the unit if the owner determine that household member has participated in or been culpable for, based on a preponderance of the evidence, action or failure to act that warrants denial (or termination). The fact that there has been an arrest is not a basis for the requisite determination that the relevant individual participated in or was culpable for the action or failure to act, but the conduct that resulted in the arrest can be such a basis provided there is sufficient evidence that it occurred independent of the fact of the arrest. The duration of any such exclusion shall not extend beyond the time period an individual could be denied admission for that action or failure to act and shall be reasonable in light of all relevant circumstances, including but not limited to the excluded household member's age and relationship to other household members.

(d) *Effect of failure to disclose criminal history.* Except where an owner solely relies on self-disclosure in reviewing an applicant's criminal record, the owner may deny for failure to disclose criminal record only if that criminal record would be material to a denial decision under this regulations and the owner's selection standards.

(e) *Criminal activity.* (1) The owner may screen and deny a household on the basis of criminal activity only if the owner determines that the household member is currently engaging in, or has engaged in during a reasonable time before the owner's denial decision:

(i) Drug-related criminal activity;

(ii) Violent criminal activity;

(iii) Other criminal activity that would threaten the health, safety, or right to peaceful enjoyment of the premises by other residents; or

(iv) Other criminal activity that would threaten the health or safety of the owner or any employee, contractor, subcontractor or agent of the owner who is involved in the housing operations.

(2) The owner may establish a period before the admission decision during which an applicant must not have engaged in the activities specified in paragraph (e)(1) of this section (*reasonable time*). However, prohibiting admission for a period of time longer than three years following any particular criminal activity, including prior terminations from HUD-assisted housing for drug-related criminal activity, is presumptively unreasonable. An owner may impose a longer prohibition based on particular criminal activity only after a determination, based on empirical evidence, that such longer prohibition is necessary to ensuring the health, safety, and peaceful enjoyment of other tenants or property employees.

(3) Before the owner makes a denial determination on the basis of criminal activity, the owner must notify the household of the proposed action and provide a copy of any relevant criminal record to the subject of the record and the applicant (except where otherwise prohibited by law) no less than 15 days prior to notification of the denial. During the 15-day period, the owner must provide the household and the subject of any record an opportunity to dispute the accuracy and relevance of that record. The owner must provide the household the opportunity to present, and the owner must take into consideration, any relevant mitigating information, which may include but is not limited to the factors set forth in paragraphs (b)(1)(i) through (v) of this section.

(4) All determinations to deny the household on the basis of criminal activity must be supported by a preponderance of the evidence. The fact that there has been an arrest for a crime is not a basis for the requisite determination that the relevant individual engaged in criminal activity, but the conduct that resulted in the arrest can be such a basis provided there is sufficient evidence that it occurred independent of the fact of the arrest.

(5) No applicant that was previously denied by the owner because of a determination concerning a member of the household under paragraph (e)(1) of this section may be denied based solely on the prior denial.

PART 960—ADMISSION TO, AND OCCUPANCY OF, PUBLIC HOUSING

■ 25. The authority citation for part 960 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437n, 1437z–3, and 3535(d).

■ 26. Amend § 960.103 by adding paragraph (e) to read as follows:

§ 960.103 Equal opportunity requirements and protection for victims of domestic violence, dating violence, sexual assault, or stalking.

* * * * *

(e) *State or local law.* Nothing in this part is intended to pre-empt operation of State and local laws that provide additional protections to those with criminal records. However, State and local laws shall not change or affect any requirement of this part, or any other HUD requirements for administration or operation of the program.

■ 27. Amend § 960.202 by revising paragraph (c)(2), redesignating paragraphs (c)(3) and (4) as paragraphs (c)(4) and (5) respectively, and adding new paragraph (c)(3) to read as follows:

§ 960.202 Tenant selection policies.

* * * * *

(c) * * *

(2) Be publicized by posting copies thereof in each office where applications are received;

(3) Be made available to applicants or tenants for free upon request. The PHA may satisfy this requirement by posting its selection policies or its documents containing these policies on its website and/or its social media account(s), in a conspicuous location and an accessible format, where applicable;

* * * * *

■ 28. Amend § 960.203 by:
■ a. Removing paragraph (b) and redesignating paragraphs (c) and (d) as paragraphs (b) and (c), respectively;
■ b. Revising newly redesignated paragraphs (b)(3) and (c); and
■ c. Adding a new paragraph (d).

The revisions and addition read as follows:

§ 960.203 Standards for PHA tenant selection criteria.

* * * * *

(b) * * *

(3) A record of criminal activity involving crimes of physical violence to persons or property and other criminal activity which would adversely affect the health, safety, or welfare of other tenants or PHA employees. (See § 960.204.) With respect to criminal activity described in § 960.204:

(i) The PHA may require an applicant to exclude a household member from residing in the unit in order to be admitted to the housing program where that household member has participated in or been culpable for actions described in § 960.204 that warrants denial. The duration of any such exclusion shall not extend beyond the time period an individual could be denied admission for that action or failure to act and shall be reasonable in light of all relevant circumstances, including but not limited to the excluded household member's age and relationship to other household members.

(ii) Except in those circumstances where a statute requires a PHA to deny admission based on criminal activity, any reliance on criminal activity in admissions decisions is not permitted without an individualized assessment. All determinations to deny admission on the basis of criminal activity must be supported by a preponderance of the evidence. The fact that there has been an arrest for a crime is not a basis for the requisite determination that the relevant individual engaged in criminal activity, but the conduct that resulted in the arrest can be such a basis provided there is sufficient evidence that it occurred independent of the fact of the arrest. A criminal record may be considered in the individualized assessment only if it is relevant to determining the risk that an applicant would threaten the health, safety, or right to peaceful enjoyment of residents or PHA employees.

* * * * *

(c) In the event of the receipt of unfavorable information with respect to an applicant, consideration shall be given to the nature of the applicant's conduct. Before denying admission on the basis of a criminal record, criminal activity, illegal drug use, or alcohol abuse, the PHA must conduct an individualized assessment that takes into account circumstances relevant to a particular admission decision. The circumstances relevant to a particular admission decision include but are not limited to:

(1) The nature and circumstances of the conduct in question, including the seriousness of the offense, the extent to which it bears on suitability for tenancy, and the length of time that has passed since the conduct;

(2) The extent to which the applicant has taken actions to mitigate risk that admission of the individual would adversely affect the health, safety, and peaceful enjoyment of the premises by other residents or PHA employees (*e.g.,* evidence of post-conviction rehabilitation, treatment/recovery, employment, housing history);

(3) Whether the applicant would like the PHA to consider mitigating circumstances related to a medical condition of a household member (which then must be considered);

(4) Whether the relevant circumstances provide reason to believe such conduct will recur and rise to the level that it may interfere with the health, safety, or right to peaceful enjoyment of the premises by others. In making this determination, the PHA must consider relevant evidence, which may include evidence provided by the household that a household member has successfully completed substance use treatment services or has been otherwise rehabilitated successfully along with evidence that the illegal use of a controlled substance or abuse of alcohol (as applicable) has not recurred. For this purpose, the PHA may require the applicant to submit evidence of the household member's current participation in, or successful completion of, substance use treatment services or that the household member is otherwise in recovery from drug use or alcohol abuse; and

(5) Whether further considerations must be made in order to comply with the obligation to consider and provide reasonable accommodations to persons with disabilities. A reasonable accommodation may include, for example, disregarding the conduct or record if it was disability-related.

(d) Except where a PHA solely relies on self-disclosure in reviewing an applicant's criminal record, the PHA may deny admission for failure to disclose criminal record only if that criminal record would be material to an admissions decision pursuant to this rule and the PHA's admissions standards.

■ 29. Amend § 960.204 by:
■ a. Revising the section heading and paragraphs (a)(1)(i) and (ii), (a)(2)(i) and (ii), and (b);
■ b. Redesignating paragraphs (c) and (d) as paragraphs (d) and (e), respectively;
■ c. Adding a new paragraph (c); and
■ d. Revising newly redesignated paragraph (d).

The revisions and addition read as follows:

§ 960.204 Denial of admission for criminal activity or drug use by household members.

(a) * * *

(1) * * *

(i) The evicted household member who engaged in drug-related criminal activity is participating in or has successfully completed substance use treatment services approved by the PHA; or

(ii) The circumstances leading to the eviction no longer exist (for example, the household member who engaged in the criminal activity has died or is imprisoned).

(2) * * *

(i) The PHA determines that any household member is currently engaging in illegal use of a drug (*see* definition of ''*Currently engaging in or engaged in*'' at 24 CFR 5.100); or

(ii) The PHA determines that a household member's illegal use or pattern of illegal use of a drug would threaten the health, safety, or right to peaceful enjoyment of the premises by other residents or PHA employees.

* * * * *

(b) *Persons that abuse or show a pattern of abuse of alcohol.* The PHA must establish standards that prohibit admission to the PHA's public housing program if the PHA determines that a household member's abuse or pattern of abuse of alcohol would threaten the health, safety, or right to peaceful enjoyment of the premises by other residents or PHA employees.

(c) *Permissive prohibitions*—(1) *Prohibiting admission of other criminals.* The PHA may prohibit admission of a household to the program only if the PHA determines that any household member is currently engaged in, or has engaged in during a reasonable time before the admission:

(i) Drug-related criminal activity;

(ii) Violent criminal activity;

(iii) Other criminal activity which may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents or persons residing in the immediate vicinity; or

(iv) Other criminal activity which may threaten the health or safety of property management staff, or persons performing a contract administration function or responsibility on behalf of the PHA (including a PHA employee or a PHA contractor, subcontractor or agent).

(2) *Reasonable time.* The PHA may establish a period before the admission decision during which an applicant must not have engaged in the activities specified in paragraph (c)(1) of this section (''reasonable time''). However, prohibiting admission for a period of time longer than three years following any particular criminal activity, including prior terminations from HUD-assisted housing for drug-related criminal activity, is presumptively unreasonable. A PHA may impose a longer prohibition based on particular criminal activity only after a PHA determination, based on empirical evidence, that such longer prohibition is necessary to ensuring the health, safety, and peaceful enjoyment of other tenants or property employees.

(3) *Previous denial.* No applicant that was previously denied admission based on criminal activity shall be prohibited from applying for assistance. A PHA must not deny the application based solely on the prior denial.

(d) *Notification.* Before a PHA denies admission on the basis of criminal activity, the PHA must notify the household of the proposed action and provide a copy of any relevant criminal record to the subject of the record and the applicant (except where otherwise prohibited by law) no less than 15 days prior to notification of the denial. During the 15-day period, the PHA must provide the subject of any record an opportunity to dispute the accuracy and relevance of that record. The PHA must provide the household an opportunity to present any relevant mitigating information which may include but is not limited to the relevant mitigating factors set forth at § 960.203(c)(1) through (5).

* * * * *

■ 30. Amend § 960.205 by revising paragraph (b)(1) to read as follows:

§ 960.205 Drug use by applicants: Obtaining information from substance use treatment provider.

* * * * *

(b) * * *

(1) *Currently engaging in illegal use of a drug.* See definition of ''Currently engaging in or engaged in'' at 24 CFR 5.100.

* * * * *

PART 966—PUBLIC HOUSING LEASE AND GRIEVANCE PROCEDURE

■ 31. The authority citation for part 966 continues to read as follows:

Authority: 42 U.S.C. 1437d and 3535(d).

■ 32. Amend § 966.4 by:

■ a. Removing the cross-reference to ''(1)(5)'' and adding in its place a reference to ''(l)(5)'' in paragraph (l)(2)(iv)(A);

■ b. Revising paragraph (l)(3)(i) introductory text and the first sentence of paragraph (l)(3)(ii);

■ c. Revising and republishing paragraph (l)(5); and

■ d. Removing from the second sentence of paragraph (m) the word ''tenant's'' and adding in its place the word ''PHA's''.

The revisions read as follows:

§ 966.4 Lease requirements.

* * * * *

(l) * * *

(3) * * *

(i) The PHA must give adequate written notice of lease termination, which shall not provide less notice than:

* * * * *

(ii) The notice of lease termination to the tenant shall state specific grounds for termination and the specific lease provision at issue and shall inform the tenant of the tenant's right to make such reply as the tenant may wish. * * *

* * * * *

(5) *PHA termination of tenancy for criminal activity or alcohol abuse.*—(i) *Evicting tenants on the basis of drug-related criminal activity*—(A) *Methamphetamine conviction.* The PHA must immediately terminate the tenancy if the PHA determines that any member of the household has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing.

(B) *Drug crime on or off the premises.* The lease must provide that drug-related criminal activity engaged in on or off the premises by any tenant, member of the tenant's household or guest, and any such activity engaged in on the premises by any other person under the tenant's control, is grounds for the PHA to terminate tenancy. In addition, the lease must provide that a PHA may evict a family when the PHA determines that a household member is illegally using a drug or when the PHA determines that a pattern of illegal use of a drug interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

(ii) *Evicting tenants on the basis of other criminal activity*—(A) *Threat to other residents.* The lease must provide that any criminal activity by a covered person that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents (including PHA management staff residing on the premises) or threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises is grounds for termination of tenancy.

(B) *Fugitive felon or parole violator.* The PHA may terminate the tenancy if a tenant is fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or attempt to commit a crime, that is a felony under the laws of the place from which the individual flees, or that, in the case of the State of New Jersey, is a high misdemeanor; or violating a condition of probation or parole imposed under Federal or State law.

(iii) *Eviction for criminal activity*—(A) *Evidence.* The PHA may evict the tenant by judicial action for criminal activity in accordance with this section if the PHA determines, based on a preponderance of the evidence, that the covered person has engaged in the criminal activity. The fact that there has been an arrest for a crime is not a basis for a determination that the relevant individual engaged in criminal activity warranting termination.

(B) *Notice to post office.* When a PHA evicts an individual or family for criminal activity, the PHA must notify the local post office serving the dwelling unit that the individual or family is no longer residing in the unit.

(iv) *Use of criminal record.* If the PHA seeks to terminate the tenancy for criminal activity as shown by a criminal record, the PHA must notify the household of the proposed action to be based on the information and must provide the subject of the record and the tenant (except where otherwise prohibited by law) with a copy of the criminal record before a PHA grievance hearing or court trial concerning the termination of tenancy or eviction. The tenant must be given an opportunity to dispute the accuracy and relevance of that record in the grievance hearing or court trial.

(v) *Cost of obtaining criminal record.* The PHA may not pass along to the tenant the costs of a criminal records check.

(vi) *Evicting tenants on the basis of alcohol abuse.* The PHA must establish standards that allow termination of tenancy if the PHA determines that a household member has:

(A) Engaged in abuse or pattern of abuse of alcohol that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents; or

(B) Furnished false or misleading information concerning illegal drug use, alcohol abuse, or rehabilitation with respect to illegal drug use or alcohol abuse.

(vii) *PHA action, generally*—(A) *Consideration of circumstances.* In a manner consistent with such policies, procedures and practices, the PHA may consider all circumstances relevant to a particular case. Before exercising discretion to terminate assistance or evict based on criminal activity, illegal drug use, or alcohol abuse, the PHA must take into account all the circumstances relevant to a particular termination or eviction. The circumstances relevant to a particular termination or eviction may include but are not limited to:

(*1*) The nature and circumstances of the conduct in question, including the seriousness of the offense and the extent to which it bears on fitness for continued tenancy,

(*2*) The effect on the community of termination or eviction; or of the failure of the responsible entity to take such action;

(*3*) The extent of participation by the leaseholder in the conduct;

(*4*) The effect of termination of assistance or eviction on household members not involved in the conduct;

(*5*) The extent to which the leaseholder or relevant household member has taken reasonable steps to prevent or mitigate the offending action;

(*6*) Whether the relevant circumstances provide reason to believe such conduct will recur and rise to the level that it may interfere with the health, safety, or right to peaceful enjoyment of the premises by others. In making this determination the PHA must consider relevant evidence, which may include evidence provided by the household that a household member has successfully completed substance use treatment services or has been otherwise rehabilitated successfully along with evidence that the illegal use of a controlled substance or abuse of alcohol (as applicable) has not recurred. For this purpose, the PHA may require the applicant to submit evidence of the household member's current participation in, or successful completion of, substance use treatment services or that the household member is otherwise in recovery from drug use or alcohol abuse;

(*7*) Whether the leaseholder would like the owner to consider mitigating circumstances related to a medical condition of a household member; and

(*8*) Whether further considerations must be made in order to comply with the obligation to consider and provide reasonable accommodations to persons with disabilities. A reasonable accommodation may include, for example, disregarding the conduct or record if it was disability-related.

(B) *Exclusion of culpable household member.* The PHA may require a tenant to exclude a household member from residing in the unit in order to continue to reside in the assisted unit if the PHA determines that household member has participated in or been culpable for, based on a preponderance of the evidence, action or failure to act that warrants termination. The fact that there has been an arrest is not a basis for the requisite determination that the relevant individual participated in or was culpable for the action or failure to act, but the conduct that resulted in the arrest can be such a basis provided there is sufficient evidence that it occurred independent of the fact of the arrest. The duration of any such exclusion shall not extend beyond the time period an individual could be denied admission per admission criteria and shall be reasonable in light of all relevant circumstances, including but not limited to the excluded household member's age and relationship to other household members.

(C) *Nondiscrimination limitation.* The PHA's eviction actions must be consistent with the fair housing and equal opportunity provisions of 24 CFR 5.105 and 24 CFR part 5, subpart L.

* * * * *

■ 33. Amend § 966.56 by revising paragraph (b)(1) to read as follows:

§ 966.56 Procedures governing the hearing.

* * * * *

(b) * * *

(1) The opportunity to examine before the grievance hearing any PHA documents, including records and regulations, that are directly relevant to the hearing. (For a grievance hearing concerning a termination of tenancy or eviction, see also § 966.4(m).) The tenant shall be allowed to copy or receive a copy of any such document at the PHA's expense. If the PHA does not make the document available for examination upon request by the complainant, the PHA may not rely on such document at the grievance hearing.

* * * * *

PART 982—SECTION 8 TENANT-BASED ASSISTANCE: HOUSING CHOICE VOUCHER PROGRAM

■ 34. The authority citation for part 982 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

■ 35. Amend § 982.53 by revising paragraph (d) to read as follows:

§ 982.53 Equal opportunity requirements and protection for victims of domestic violence, dating violence, sexual assault, or stalking.

* * * * *

(d) *State and local law.* Nothing in this part is intended to pre-empt operation of State and local laws that prohibit discrimination against a Section 8 voucher-holder because of status as a Section 8 voucher-holder, or State and local laws that provide additional protections to those with criminal records. However, such State and local laws shall not change or affect any requirement of this part, or any other HUD requirements for administration or operation of the program.

* * * * *

■ 36. Amend § 982.54 by revising paragraph (b) to read as follows:

§ 982.54 Administrative Plan.

* * * * *

(b) The administrative plan must be in accordance with HUD regulations and requirements. The administrative plan is a supporting document to the PHA plan (24 CFR part 903) and must be available for public review. The PHA may satisfy this requirement by posting its administrative plan on its website and/or its social media account(s), in a conspicuous location and an accessible format, where applicable. The PHA must revise the administrative plan if needed to comply with HUD requirements.

* * * * *

■ 37. Amend § 982.301 by revising paragraph (b)(4) to read as follows:

§ 982.301 Information when family is selected.

* * * * *

(b) * * *

(4) Where the family may lease a unit and an explanation of how portability works, including information on how portability may affect the family's assistance through screening, subsidy standards, payment standards, and any other elements of the portability process which may affect the family's

assistance, including that the receiving PHA may not rescreen a family that moves under the portability procedures (see § 982.355(c)(9)).

* * * * *

■ 38. Amend § 982.306 by revising paragraphs (c)(3) and (5) to read as follows:

§ 982.306 PHA disapproval of owner.

* * * * *

(c) * * *

(3) The owner is currently engaging in or has engaged in, during a reasonable time before the decision regarding approval, any drug-related criminal activity, violent criminal activity, or other criminal activity that would threaten the health, safety, or right to peaceful enjoyment of the premises by residents or PHA employees;

* * * * *

(5) The owner has a history or practice of refusing an appropriate request by a PHA to take action to terminate tenancy of tenants of units assisted under Section 8 or any other federally assisted housing program for activity engaged in by the tenant, any member of the household, a guest or another person under the control of any member of the household that:

* * * * *

■ 39. Amend § 982.307 by:

■ a. Adding ''and with §§ 982.552 and 982.553'' to the end of the last sentence in paragraph (a)(1); and

■ b. Revising paragraphs (a)(3) introductory text, (a)(3)(iv), and (b)(2);

The revisions read as follows:

§ 982.307 Tenant screening.

(a) * * *

(3) The owner is responsible for screening of families on the basis of their tenancy histories. Consistent with the requirements of the Fair Housing Act, including those found at 24 CFR 100.500, an owner may consider a family's background with respect to such factors as:

* * * * *

(iv) Drug-related criminal activity, violent criminal activity, or other criminal activity that is a threat to the health, safety or property of others; and

* * * * *

(b) * * *

(2) When a family wants to lease a dwelling unit, the PHA may offer the owner other information in the PHA possession about the tenancy history of the family members.

* * * * *

■ 40. Amend § 982.310 by revising the headings for paragraphs (c)(1) and (2) and revising paragraphs (c)(3) and (h)(1) through (3) to read as follows:

§ 982.310 Owner termination of tenancy.

* * * * *

(c) * * *

(1) *Evicting tenants on the basis of drug-related criminal activity on or near the premises.* * * *

(2) *Evicting tenants on the basis of other criminal activity.* * * *

(3) *Evidence of criminal activity.* The owner may terminate tenancy and evict by judicial action a family for criminal activity by a covered person in accordance with this section if the owner determines that the covered person has engaged in the criminal activity. This determination shall be made on a preponderance of the evidence. The fact that there has been an arrest for a crime is not a basis for the requisite determination that the relevant individual engaged in criminal activity warranting termination of tenancy or eviction pursuant to this section. (See 24 CFR part 5, subpart J, for provisions concerning access to criminal records.) The owner may terminate tenancy and evict by judicial action based on the conduct underlying an arrest if the conduct indicates that the individual is not suitable for tenancy and the owner has sufficient evidence other than the fact of arrest that the individual engaged in the conduct.

* * * * *

(h) * * *

(1) *General.* If the law and regulation permit the owner to take an action but do not require action to be taken, the owner may take or not take the action in accordance with the owner's standards for eviction. The owner may consider all of the circumstances relevant to a particular eviction case, such as:

(i) The nature and circumstances of the conduct in question, including the seriousness of the offense and the extent to which it bears on fitness for continued tenancy;

(ii) The effect on the community of eviction or of the failure of the owner to take such action;

(iii) The extent of participation by the leaseholder in the conduct;

(iv) The effect of eviction on household members not involved in the conduct; and

(v) The extent to which the leaseholder has taken reasonable steps to prevent or mitigate the offending action.

(2) *Terminations based on criminal activity, illegal drug use or alcohol abuse.* Where eviction would be based on a finding that an individual is currently engaging in or has in engaged in criminal activity, illegal drug use, or alcohol abuse, the owner may consider any relevant circumstances described in paragraphs (h)(1)(i) through (v) of this section and may also consider any of the following:

(i) Whether the relevant circumstances provide reason to believe such conduct will recur and rise to the level that it may interfere with the health, safety, or right to peaceful enjoyment of the premises by others. Relevant evidence may include evidence provided by the household that a household member has successfully completed substance use treatment services or has been otherwise rehabilitated successfully along with evidence that the illegal use of a controlled substance or abuse of alcohol (as applicable) has not recurred. For this purpose, the owner may require the applicant to submit evidence of the household member's current participation in, or successful completion of, substance use treatment services or that the household member is otherwise in recovery from drug use or alcohol abuse; and

(ii) Whether the leaseholder would like the owner to consider mitigating circumstances related to a medical condition of a household member.

(3) *Exclusion of culpable household member.* The owner may require an applicant (or tenant) to exclude a household member from residing in the unit in order to be admitted to the housing program (or continue to reside in the assisted unit), if the owner determines that household member has participated in or been culpable for, based on a preponderance of the evidence, action or failure to act that warrants denial (or termination). The fact that there has been an arrest is not a basis for the requisite determination that the relevant individual participated in or was culpable for the action or failure to act, but the conduct that resulted in the arrest can be such a basis provided there is sufficient evidence that it occurred independent of the fact of the arrest.

* * * * *

■ 41. Amend § 982.355 by adding a sentence at the end of paragraph (c)(9) to read as follows:

§ 982.355 Portability: Administration by initial and receiving PHA.

* * * * *

(c) * * *

(9) * * * A family that moves under the portability procedures must not be subject to rescreening by the receiving PHA.

* * * * *

■ 42. Amend § 982.552 by revising paragraphs (b)(1), (c)(1) introductory

text, (c)(1)(iii) and (v), and (c)(2) and adding paragraph (f) to read as follows:

§ 982.552 PHA denial or termination of assistance for family.

* * * * *

(b) * * *

(1) For provisions on denial of admission and termination of assistance for illegal drug use, other criminal activity, and alcohol abuse that would threaten other residents or PHA employees, see § 982.553.

* * * * *

(c) * * *

(1) *Grounds for denial or termination of assistance.* The PHA may deny program assistance for an applicant, or terminate program assistance for a participant, for any of the following grounds:

* * * * *

(iii) If a PHA has terminated assistance under the program for any member of the family;

* * * * *

(v) If the family currently owes rent or other amounts to the PHA or to another PHA in connection with Section 8 or public housing assistance under the 1937 Act, other than amounts subject to a payment agreement in good standing;

* * * * *

(2) *Consideration of circumstances.* In determining whether to deny or terminate assistance because of action or failure to act by members of the family:

(i) The PHA may consider all relevant circumstances such as the seriousness of the case, the extent of participation or culpability of individual family members, mitigating circumstances related to the disability of a family member, and the effects of denial or termination of assistance on other family members who were not involved in the action or failure. With respect to denials of admission that involve criminal activity, illegal drug use, or alcohol abuse the requirements at § 982.553(a) apply. With respect to termination of assistance that involve criminal activity, illegal drug use, or alcohol abuse the requirements at § 982.553(b) apply.

(ii) The PHA may impose, as a condition of continued assistance for other family members, a requirement that other family members who participated in or were culpable for the action or failure will not reside in the unit for a reasonable period of time not to exceed the amount of time such household member could be excluded for that action or failure per admission criteria. The PHA may permit the other members of a participant family to continue receiving assistance.

(iii) If the family includes a person with disabilities, the PHA decision concerning such action is subject to consideration of reasonable accommodation in accordance with part 8 of this title.

(iv) The PHA's admission and termination actions must be consistent with fair housing and equal opportunity provisions of 24 CFR 5.105, and with the requirements of 24 CFR part 5, subpart L.

(v) In determining whether to terminate assistance on the basis of criminal activity, the PHA may stay the termination hearing while the criminal court case for the underlying activity is pending.

* * * * *

(f) *Effect of failure to disclose criminal record.* Except where a PHA solely relies on self-disclosure in reviewing an applicant's criminal record, the PHA may deny admission for failure to disclose criminal record only if that criminal record would be material to an admissions decision pursuant to this rule and the PHA's or owner's admissions standards.

■ 43. Revise § 982.553 to read as follows:

§ 982.553 Denial of admission and termination of assistance on the basis of criminal activity, illegal drug use, or alcohol abuse.

(a) *Denial of admission*—(1) *General.* If the law and regulation permit the PHA to deny admission but do not require denial of admission based on a criminal record, a finding of criminal activity, illegal drug use, or alcohol abuse, the PHA may take or not take the action in accordance with the PHA standards for admission. All determinations to deny admission on the basis of criminal activity must be supported by a preponderance of the evidence. An arrest record alone may not be the basis for a determination that an individual has engaged in criminal activity that warrants denial of admission. The actions that resulted in the arrest could be relevant to determine the applicant's risk to engage in such conduct provided there is sufficient evidence independent of the arrest that the actions occurred and must be considered alongside the factors set forth at paragraph (a)(2) of this section and other relevant mitigating factors.

(2) *Relevant circumstances and individualized assessment.* Before denying admission on the basis of a criminal record, criminal activity, illegal drug use, or alcohol abuse, the PHA must conduct an individualized assessment that takes into account circumstances relevant to a particular admission decision. The circumstances relevant to a particular admission decision include but are not limited to:

(i) The nature and circumstances of the conduct in question, including the seriousness of the offense, the extent to which it bears on suitability for tenancy, and the length of time that has passed since the conduct;

(ii) The extent to which the applicant or relevant household member has taken actions to mitigate the risk that admission of the individual would adversely affect the health, safety, and peaceful enjoyment of the premises by other residents, the owner, or property employees (*e.g.,* evidence of post-conviction rehabilitation, treatment/recovery, employment, housing history; treatment of a medical condition of a household member);

(iii) Whether the applicant would like the PHA to consider mitigating circumstances related to a medical condition of a household member (which then must be considered);

(iv) Whether the relevant circumstances provide reason to believe such conduct will recur and rise to the level that it may interfere with the health, safety, or right to peaceful enjoyment of the premises by others. In making this determination, the PHA must consider relevant evidence, which may include evidence provided by the household that a household member has successfully completed substance use treatment services or has been otherwise rehabilitated successfully along with evidence that the illegal use of a controlled substance or abuse of alcohol (as applicable) has not recurred. For this purpose, the PHA may require the applicant to submit evidence of the household member's current participation in, or successful completion of, substance use treatment services or that the household member is otherwise in recovery from drug use or alcohol abuse; and

(v) Whether further considerations must be made in order to comply with the obligation to consider and provide reasonable accommodations to persons with disabilities. A reasonable accommodation may include, for example, disregarding the conduct or record if it was disability-related.

(3) *Prohibiting admission on the basis of drug-related criminal activity.* (i) The PHA *must* prohibit admission to the program of an applicant for three years from the date of eviction if a household member has been evicted from federally assisted housing for drug-related criminal activity. However, the PHA may admit the household if the PHA determines:

(A) That the evicted household member who engaged in drug-related criminal activity is participating in or has successfully completed substance use treatment services; or

(B) That the circumstances leading to eviction no longer exist (for example, the household member who engaged in the criminal activity has died or is imprisoned).

(ii) The PHA must establish standards that prohibit admission if:

(A) The PHA determines that any household member is currently engaging in illegal use of a drug (*see* definition of ''Currently engaging in or engaged in'' at 24 CFR 5.100);

(B) The PHA determines that a household member's illegal drug use or a pattern of illegal drug use threatens the health, safety, or right to peaceful enjoyment of the premises by other residents or PHA employees; or

(C) Any household member has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing.

(4) *Prohibiting admission on the basis of other criminal activity*—(i) *Mandatory prohibition.* The PHA *must* establish standards that prohibit admission to the program if any member of the household is subject to a lifetime registration requirement under a State sex offender registration program. In this screening of applicants, the PHA must perform criminal history background checks necessary to determine whether any household member is subject to a lifetime sex offender registration requirement in the State where the housing is located and in other States where the household members are known to have resided.

(ii) *Permissive prohibitions.* (A) The PHA *may* prohibit admission of a household to the program on the basis of criminal activity only if the PHA determines that any household member is currently engaged in, or has engaged in during a reasonable time before the admission:

(*1*) Drug-related criminal activity;

(*2*) Violent criminal activity;

(*3*) Other criminal activity that would threaten the health, safety, or right to peaceful enjoyment of the premises by other residents or persons residing in the immediate vicinity; or

(*4*) Other criminal activity that would threaten the health or safety of the owner, property management staff, or persons performing a contract administration function or responsibility on behalf of the PHA (including a PHA employee or a PHA contractor, subcontractor or agent).

(B) The PHA may establish a period before the admission decision during which an applicant must not have engaged in the activities specified in paragraph (a)(3)(ii) of this section (''reasonable time''). However, prohibiting admission for a period of time longer than three years following any particular criminal activity, including prior terminations from HUD-assisted housing for drug-related criminal activity, is presumptively unreasonable. A PHA or owner may impose a longer prohibition based on particular criminal activity only after a PHA determination, based on empirical evidence, that such longer prohibition is necessary to ensuring the health, safety, and peaceful enjoyment of other tenants or property employees.

(C) No applicant that was previously denied admission based on criminal activity shall be prohibited from applying for assistance. A PHA must not deny the application based solely on the prior denial.

(*1*) *Prohibiting admission on the basis of alcohol abuse.* The PHA must establish standards that prohibit admission to the program if the PHA determines that a household member's abuse or pattern of abuse of alcohol threatens the health, safety, or right to peaceful enjoyment of the premises by other residents or PHA employees.

(*2*) [Reserved]

(b) *Terminating assistance.* (1) *General.* If the law and regulation permit the PHA to terminate assistance but does not require the PHA to do so based on criminal record, criminal activity, illegal drug use, or alcohol abuse, the PHA may take or not take the action to terminate assistance in accordance with the PHA standards for termination. Before exercising the PHA's discretion to terminate assistance based on criminal record, a finding of criminal activity, illegal drug use, or alcohol abuse, the PHA must take into account all the circumstances relevant to a particular termination. The circumstances relevant to a particular termination may include but are not limited to:

(i) The nature and circumstances of the conduct in question, including the seriousness of the offense and the extent to which it bears on fitness for continued tenancy,

(ii) The effect on the community of termination or eviction; or of the failure of the responsible entity to take such action;

(iii) The extent of participation by the leaseholder in the conduct;

(iv) The effect of termination of assistance or eviction on household members not involved in the conduct;

(v) The extent to which the leaseholder or relevant household member has taken reasonable steps to prevent or mitigate the offending action;

(vi) Whether the relevant circumstances provide reason to believe such conduct will recur and rise to the level that it may interfere with the health, safety, or right to peaceful enjoyment of the premises by others. In making this determination the PHA must consider relevant evidence, which may include evidence provided by the household that a household member has successfully completed substance use treatment services or has been otherwise rehabilitated successfully along with evidence that the illegal use of a controlled substance or abuse of alcohol (as applicable) has not recurred. For this purpose, the PHA may require the applicant to submit evidence of the household member's current participation in, or successful completion of, substance use treatment services or that the household member is otherwise in recovery from drug use or alcohol abuse;

(vii) Whether the leaseholder would like the owner to consider mitigating circumstances related to a medical condition of a household member (which then must be considered); and

(viii) Whether further considerations must be made in order to comply with the obligation to consider and provide reasonable accommodations to persons with disabilities. A reasonable accommodation may include, for example, disregarding the conduct or record if it was disability-related.

(2) *Terminating assistance on the basis of drug-related criminal activity.* (i) The PHA *must* establish standards that allow the PHA to terminate assistance for a family under the program if the PHA determines that:

(A) Any household member is currently engaged in any illegal use of a drug; or

(B) A pattern of illegal use of a drug by any household member threatens the health, safety, or right to peaceful enjoyment of the premises by other residents or PHA employees.

(ii) The PHA must immediately terminate assistance for a family under the program if the PHA determines that any member of the household has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing.

(iii) The PHA must establish standards that allow the PHA to terminate assistance under the program for a family if the PHA determines that any family member has violated the family's obligation under § 982.551 not

to engage in any drug-related criminal activity.

(3) *Terminating assistance on the basis of other criminal activity.* The PHA must establish standards that allow the PHA to terminate assistance under the program for a family if the PHA determines that any household member has violated the family's obligation under § 982.551 not to engage in violent criminal activity.

(4) *Terminating assistance on the basis of alcohol abuse.* The PHA must establish standards that allow termination of assistance for a family if the PHA determines that a household member's abuse or pattern of abuse of alcohol threatens the health, safety, or right to peaceful enjoyment of the premises by other residents or PHA employees.

(c) *Evidence of criminal activity.* The PHA may terminate assistance for criminal activity by a household member as authorized in this section if the PHA determines, based on a preponderance of the evidence, that the household member has engaged in the activity. The fact that there has been an arrest for a crime is not a basis for the requisite determination that the relevant individual engaged in criminal activity warranting termination but the conduct that resulted in the arrest can be such a basis provided there is sufficient evidence that it occurred independent of the fact of the arrest.

(d) *Notification requirements*—(1) *Admissions decisions.* (i) Before a PHA denies admission on the basis of criminal activity, the PHA must notify the household of the proposed action and provide a copy of any relevant criminal record to the subject of the record and the applicant (except where otherwise prohibited by law) no less than 15 days prior to notification of the denial. During the 15-day period, the PHA must provide the subject of any record an opportunity to dispute the accuracy and relevance of that record. The PHA must provide the household an opportunity to present any relevant mitigating information which may include but is not limited to the circumstances listed at 982.553(a)(2).

(ii) While a PHA is determining whether there are grounds for denial of admission based on criminal activity, the PHA cannot issue a voucher to the family, enter into a HAP contract or approve a lease, or process or provide assistance under the portability procedures.

(2) *Use of a criminal record for termination of assistance.* If a PHA proposes to terminate assistance for criminal activity as shown by a criminal record, the PHA must notify the household of the proposed action to be based on the information and must provide the subject of the record and the tenant(except where otherwise prohibited by law) with a copy of the criminal record. The PHA must give the family an opportunity to dispute the accuracy and relevance of that record in accordance with § 982.555.

(3) *Cost of obtaining criminal record.* The PHA may not pass along to the tenant the costs of a criminal records check.

(e) *Applicability of 24 CFR part 5, subpart L.* The requirements in 24 CFR part 5, subpart L apply to this section.

■ 44. Amend § 982.555 by revising the section heading and paragraph (e)(2)(i) to read as follows:

§ 982.555 Informal hearing.

* * * * *

(e) * * *

(2) * * *

(i) *By family.* The family must be given the opportunity to examine before the PHA hearing any PHA documents that are directly relevant to the hearing, including those that were used to make the determination that the family violated the family obligations and are grounds for termination. If requested, the family must be allowed to copy or be provided copies of any such document at the PHA's expense. If the PHA does not make the document available for examination on request of the family, the PHA may not rely on the document at the hearing.

* * * * *

Dated: March 19, 2024.

Marcia L. Fudge,

Secretary.

[FR Doc. 2024–06218 Filed 4–9–24; 8:45 am]

BILLING CODE 4210–67–P

FEDERAL REGISTER

Vol. 89 Wednesday,

No. 70 April 10, 2024

Part III

Department of the Interior

Bureau of Land Management

43 CFR Parts 3160 and 3170

Waste Prevention, Production Subject to Royalties, and Resource Conservation; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3160 and 3170

[BLM_HQ_FRN_MO4500174370]

RIN 1004–AE79

Waste Prevention, Production Subject to Royalties, and Resource Conservation

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: On November 30, 2022, the Department of the Interior, through the Bureau of Land Management (BLM), published in the **Federal Register** a proposed rule entitled ''Waste Prevention, Production Subject to Royalties, and Resource Conservation.'' This final rule aims to reduce the waste of natural gas from venting, flaring, and leaks during oil and gas production activities on Federal and Indian leases. The final rule also ensures that, when Federal or Indian gas is wasted, the public and Indian mineral owners are compensated for that wasted gas through royalty payments. This final rule will be codified in the Code of Federal Regulations and will replace the BLM's current requirements governing venting and flaring, which are more than four decades old.

DATES: The final rule is effective on June 10, 2024. The incorporation by reference of certain material listed in this rule is approved by the Director of the Federal Register as of June 10, 2024.

FOR FURTHER INFORMATION CONTACT: Yvette M. Fields, Division Chief, Fluid Minerals Division, telephone: 240–712–8358, email: *yfields@blm.gov,* or by mail to Bureau of Land Management, 1849 C St. NW, Room 5633, Washington, DC 20240, for information regarding the substance of this final rule.

Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. For a summary of the final rule, please see the final rule summary document in docket BLM–2022–0003 on *www.regulations.gov.*

SUPPLEMENTARY INFORMATION:

I. List of Acronyms

AO = Authorized Officer
APD = Application for Permit to Drill
API = American Petroleum Institute
AVO = Audio, visual, and olfactory
BLM = Bureau of Land Management
CA = Communitization Agreement
CAA = Clean Air Act
CFR = Code of Federal Regulations
EA = Environmental Assessment
EPA = Environment Protection Agency
FLPMA = Federal Land Policy and Management Act
FMP = Facility measurement point
FOGRMA = Federal Oil and Gas Royalty Management Act
GAO = Government Accountability Office
GOR = Gas-to-oil ratio
IMDA = Indian Mineral Development Act of 1982
IRA = Inflation Reduction Act of 2022
LDAR = Leak detection and repair
Mcf = thousand cubic feet at standard conditions
MLA = Mineral Leasing Act of 1920, as amended
NTL = Notice to Lessees
NTL–4A = Notice to Lessees and Operators of Onshore Federal and Indian Oil and Gas Leases: Royalty or Compensation for Oil and Gas Lost
OGI = Optical gas imaging
OGOR = Oil and Gas Operations Report
ONRR = Office of Natural Resources Revenue
RIA = Regulatory Impact Analysis
Unit PA = Unit participating area
WMP = Waste Minimization Plan

II. Executive Summary

On November 30, 2022, the Department of the Interior (DOI or ''Department''), through the Bureau of Land Management (BLM), published in the **Federal Register** a proposed rule entitled, Waste Prevention, Production Subject to Royalties, and Resource Conservation. 87 FR 73588 (Nov. 30, 2022). The BLM has considered the public comments received on the proposed rule to develop this final rule.

This final rule aims to reduce the waste of natural gas from oil and gas leases administered by the BLM. This gas is lost during oil and gas exploration and production activities through venting, flaring, and leaks. Venting is the intentional release of gas into the atmosphere during operations, such as liquids unloading. Gas that is combusted in a controlled manner is flared gas. Leaks are the unintentional release of gas into the atmosphere from production equipment. Although some losses of gas may be unavoidable, Federal law requires that operators take reasonable steps to prevent the waste of gas through venting, flaring and leaks. The final rule describes the reasonable steps that operators of Federal and Indian oil and gas leases must take to avoid the waste of natural gas. The final rule also ensures that, when Federal or Indian gas is avoidably wasted, the public and Indian mineral owners are compensated for the wasted gas through royalty payments.

The BLM administers a Federal onshore oil and gas leasing program pursuant to the requirements of various statutes, including the Mineral Leasing Act (MLA), the Federal Oil and Gas Royalty Management Act (FOGRMA), the Inflation Reduction Act of 2022 (IRA) Public Law 117–169, and the Federal Land Policy and Management Act (FLPMA). The MLA requires lessees to ''use all reasonable precautions to prevent waste of oil or gas developed in the land,'' [1] and further requires oil and gas lessees to observe ''such rules . . . for the prevention of undue waste as may be prescribed by [the] Secretary . . . .'' [2] Under FOGRMA, oil and gas lessees are liable for royalty payments on gas wasted from the lease site.[3] In addition, as discussed further below, the IRA provides that, for leases issued after August 16, 2022, royalties are owed on all gas produced from Federal land, subject to certain exceptions for gas that is lost during emergency situations, used for the benefit of lease operations, or ''unavoidably lost.'' FLPMA authorizes the BLM to ''regulate'' the ''use, occupancy, and development'' of the public lands via ''published rules,'' while mandating that the Secretary, ''[i]n managing the public lands . . . shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands.'' [4] The BLM also regulates oil and gas operations on trust and restricted fee lands pursuant to the Indian Mineral Leasing Act, 25 U.S.C. 396a *et seq.;* the Act of March 3, 1909, 25 U.S.C. 396; and the Indian Mineral Development Act (IMDA), 25 U.S.C. 2101 *et seq.*

In addition to managing the leasing and production of oil and gas from Federal lands, the BLM also oversees operations on many Indian and Tribal oil and gas leases pursuant to a delegation of authority from the Secretary of the Interior.[5] The Secretary's management and regulation of Indian mineral interests carries with

[1] 30 U.S.C. 225.
[2] 30 U.S.C. 187.
[3] 30 U.S.C. 1756.
[4] 43 U.S.C. 1732(b).
[5] Department of the Interior, Departmental Manual, 235 DM 1.1K.

it the duty to act as a trustee for the benefit of the Indian mineral owners.

This final rule replaces the BLM's current requirements governing natural gas venting and flaring, which are contained in Notice to Lessees and Operators of Onshore Federal and Indian Oil and Gas Leases: Royalty or Compensation for Oil and Gas Lost (NTL–4A).[6] NTL–4A was issued more than 40 years ago, and its policies and requirements are outdated. To begin, NTL–4A is ill-suited to address the large volume of flaring associated with the rapid development of unconventional ''tight'' oil and gas resources that has occurred in recent years. In addition, NTL–4A does not account for technological and operational advancements that can reduce losses of gas from oil storage tanks and equipment leaks.

In 2016, the BLM issued a final rule replacing NTL–4A with new regulations intended to reduce the waste of gas from venting, flaring, and leaks.[7] That rule was challenged in Federal court, and the BLM never fully implemented the rule due to the resulting litigation.[8] In September 2018, the BLM issued a final rule effectively rescinding the 2016 Rule, and that rule was itself challenged in court.[9] Eventually, the United States District Court for the Northern District of California vacated the 2018 rescission of the 2016 Rule on various grounds, including what the Court determined was the rule's failure to meet the BLM's statutory mandate to prevent waste.[10] The U.S. District Court for the District of Wyoming then vacated the 2016 Rule on the grounds that, among other things: (1) the MLA's ''delegation of authority does not allow and was not intended to authorize the enactment of rules justified primarily upon the ancillary benefit of a reduction in air pollution''; and (2) ''BLM acted arbitrarily and capriciously in failing to fully assess the impacts of the [2016 Rule] on marginal wells, failing to adequately explain and support the [2016 Rule's] capture requirements, and failing to separately consider the domestic costs and benefits of the [2016 Rule].'' [11] The result of these rulemakings and court decisions is that NTL–4A continues to govern venting and flaring from BLM-managed oil and gas leases.

Based on the lessons of prior rulemakings and court decisions, the BLM concludes that this final rule will reduce the waste of natural gas through improved regulatory requirements pertaining to venting, flaring, and leaks, as well as improve upon NTL–4A in a variety of significant ways while eschewing elements of the 2016 Rule criticized by the District Court.

In brief, the primary components of this final rule are as follows:

- The final rule better implements the statutory requirement that the ''lessee will . . . use all reasonable precautions to prevent the waste of oil or gas developed in the land,'' [12] consistent with the BLM's authority to issue rules implementing that statutory requirement.[13] The final rule requires operators to take reasonable measures to prevent waste as conditions of approval of an Application for Permit to Drill (APD). Then, after an APD is approved, the BLM may order an operator to implement, within a reasonable amount of time, additional reasonable measures to prevent waste at ongoing exploration and production operations. Reasonable measures to prevent waste may reflect factors including, but not limited to, advances in technology and changes in industry practice.
- The final rule requires operators to submit either a Waste Minimization Plan (WMP) or a self-certification statement as one of five required attachments to their oil well applications for permit to drill.[14] The WMP will provide the BLM with the following information: anticipated oil and associated-gas production and anticipated 3-year decline curves; certification that the operator has an executed, valid gas sales contract; and any other steps the operator commits to take to reduce or eliminate gas losses.

In lieu of a waste-minimization plan, the operator may choose to provide a self-certification statement. That statement would commit the operator to capturing 100 percent of the associated gas produced from an oil well and would obligate the operator to pay royalties on all lost gas except for gas lost through emergencies. With the addition of this new requirement to file a WMP or the described self-certification statement for oil-well APDs, operators must now provide five attachments with their completed Form 3160–3, including existing requirements for a drilling plan, a surface use plan of operations, and evidence of bond coverage. All five attachments must be administratively and technically complete before the BLM approves the APD. If the application is not complete, the BLM will defer action on the APD, and the operator will have an opportunity to address BLM-identified deficiencies. In the case of a WMP or self-certification statement, the operator must address the identified deficiencies within 2 years of receiving notification from the BLM of the deficiencies or the BLM may disapprove the application.

- The final rule recognizes the IRA's provision that royalties are not owed on gas that is ''unavoidably lost''. The final rule clarifies which lost oil or gas will qualify as ''unavoidably lost'': lost oil or gas will qualify as ''unavoidably lost'' if, as stated in the final rule at § 3179.41, the operator has taken reasonable steps to avoid waste; the operator has complied fully with applicable laws, lease terms, regulations, provisions of a previously approved operating plan, and other written orders of the BLM; and the loss is within the applicable time or volume limits. The final rule provides for several circumstances in which lost oil or gas will be considered ''unavoidably lost,'' including during well completions, production testing, and emergencies. The final rule also establishes a volumetric threshold based on oil production on royalty-free flaring due to pipeline capacity constraints, midstream processing failures, or other similar events that may prevent produced gas from being transported to market. The volumetric threshold is based on the total volume of gas flared in a month divided by the total net volume of oil produced in a month for each lease, unit PA, or CA. If an operator were to exceed the avoidable loss threshold, then royalties are due on the amount flared beyond the threshold.
- The final rule includes specific affirmative obligations that operators must take to avoid wasting oil or gas. In particular:

The final rule requires operators on Federal or Indian leases to maintain a leak detection and repair (LDAR) program designed to prevent the waste of Federal or Indian gas. An operator's LDAR program must provide for regular inspections of all oil and gas production, processing, treatment, storage, and measurement equipment on the lease site.

The requirements of this final rule are explained in detail in sections III and IV that follow.

As detailed in the Regulatory Impact Analysis (RIA) prepared for this final rule, the BLM estimates that this rule will have the following economic impacts:

[6] 44 FR 76600 (Dec. 27, 1979).

[7] 81 FR 83008 (Nov. 18, 2016).

[8] *See Wyoming* v. *U.S. Dep't of the Interior,* 493 F. Supp. 3d 1046, 1052–1057 (D. Wyo. 2020) (hereinafter, *Wyoming* court).

[9] 83 FR 49184 (Sept. 28, 2018).

[10] *California* v. *Bernhardt,* 472 F. Supp. 3d 573 (N.D. Cal. 2020).

[11] *See Wyoming* court at 1086–87.

[12] 30 U.S.C. 225.

[13] *See* 30 U.S.C. 187.

[14] *See* § 3162.3–1(d).

- Costs to industry of around $19.3 million per year (annualized at 7 percent);
- Benefits to industry in recovered gas of $1.8 million per year (annualized at 7 percent);
- Increases in royalty revenues from recovered and flared gas of $51 million per year; and
- Ancillary effects society of $17.9 million per year from reduced greenhouse gas emissions (using a 3 percent discount rate).

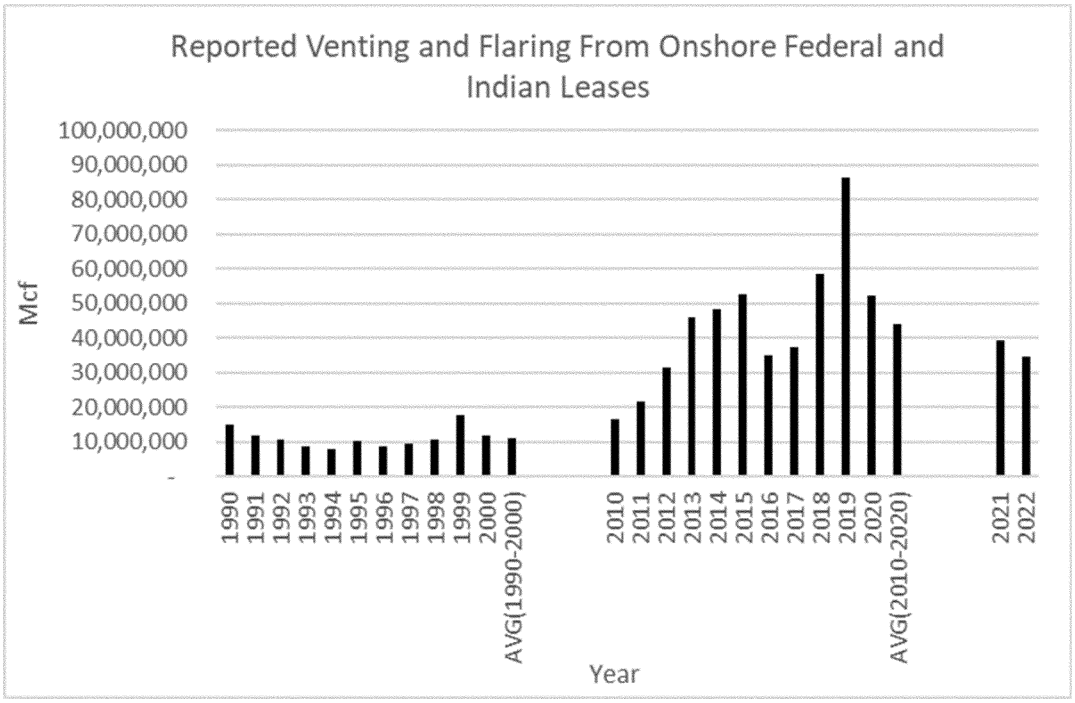
III. Background

A. Waste of Natural Gas During the Development of Federal and Indian Oil and Gas Resources

The BLM is responsible for managing more than 245 million surface acres of land and 700 million acres of subsurface mineral estate. The BLM maintains a program for leasing these lands for oil and gas development and regulates oil and gas production operations on Federal leases. While the BLM does not manage the leasing of Indian and Tribal lands for oil and gas production, the BLM does regulate oil and gas operations on many Indian and Tribal leases as part of its Tribal trust responsibilities.

The BLM's onshore oil and gas management program is a significant contributor to the Nation's oil and gas production. Domestic production from 88,887 Federal onshore oil and gas wells [15] accounts for approximately 8 percent of the Nation's natural gas supply and 9 percent of its oil.[16] In Fiscal Year (FY) 2021, operators produced 473 million barrels of oil and 3.65 trillion cubic feet of natural gas from onshore Federal and Indian oil and gas leases. The production of this oil and gas generated more than $4.2 billion in royalties. Approximately $3.2 billion of these royalties were shared between the United States and the States in which the production occurred. Approximately $1 billion of these royalties went directly to Tribes and Indian allottees for production from Indian lands.[17]

In recent years, the United States has experienced a significant increase in oil and natural gas production due to technological advances, such as hydraulic fracturing combined with directional drilling. This increase in production has been accompanied by a significant waste of natural gas through venting and flaring. During oil and gas operations it is sometimes necessary to vent gas (the intentional release of natural gas into the atmosphere) or to flare gas (the combustion of unsold gas). As the following graph illustrates, the amount of venting and flaring from Federal and Indian leases has increased dramatically from the 1990s to the 2010s, and the upward trend in flaring suggests that it will continue to be a problem. Between 1990 and 2000, the total venting and flaring reported by Federal and Indian onshore lessees averaged approximately 11 billion cubic feet (Bcf) per year. Between 2010 and 2020, in contrast, the total venting and flaring reported by Federal and Indian onshore lessees averaged approximately 44.2 Bcf per year.[18]



Assuming a $3 per thousand cubic feet (Mcf) price of gas,[19] the Federal and Indian gas that was vented and flared from 2010 to 2020 would be valued at $1.46 billion. The BLM notes that vented and flared volumes have not

[15] BLM Public Lands Statistics, Table 9 (FY 2021 data), available at *https://www.blm.gov/programs-energy-and-minerals-oil-and-gas-oil-and-gas-statistics.*

[16] Bureau of Land Management Budget Justifications and Performance Information Fiscal Year 2023, p. V–79, available at *https://www.doi.gov/sites/doi.gov/files/fy2023-blm-greenbook.pdf.*

[17] Production and revenue number derived from data maintained by the Office of Natural Resources Revenue at *https://revenuedata.doi.gov/.*

[18] The BLM analysis of ONRR Oil and Gas Operations Report part B (OGOR–B) data provided for 1990–2000 and 2010–2020. All venting and flaring data is nationwide and does not separate Federal and Indian data. For certain data points, separating Federal and Indian data would require a manual review of thousands of venting and flaring sundry notices since the BLM does not have a database that tracks this distinction.

[19] The average annual Henry Hub spot price for natural gas from 2010 through 2020 was $3.19. U.S. Energy Information Administration (EIA), Henry Hub Natural Gas Spot Price, available at *https://www.eia.gov/dnav/ng/hist/rngwhhda.htm.*

increased linearly with production: according to data maintained by the Office of Natural Resources Revenue (ONRR), the average volume of vented and flared gas as a percentage of total gas production was 0.42 percent from 1990 to 2000; from 2010 to 2020, however, vented and flared gas averaged 1.07 percent of total gas production. This metric reflects a 157 percent increase in the waste of gas during oil and gas production from Federal and Indian lands. Furthermore, the average amount of vented and flared gas (in Mcf) per barrel (bbl) of oil production was 0.0815 Mcf/bbl from 1990 to 2000, while it rose to 0.1642 Mcf/bbl from 2010 to 2020 [20]—a 102 percent increase in the waste of gas per barrel of oil produced. Together, these trends demonstrate that the requirements established by NTL–4A are ineffective at limiting the amount of gas that is vented or flared from Federal and Indian lands.

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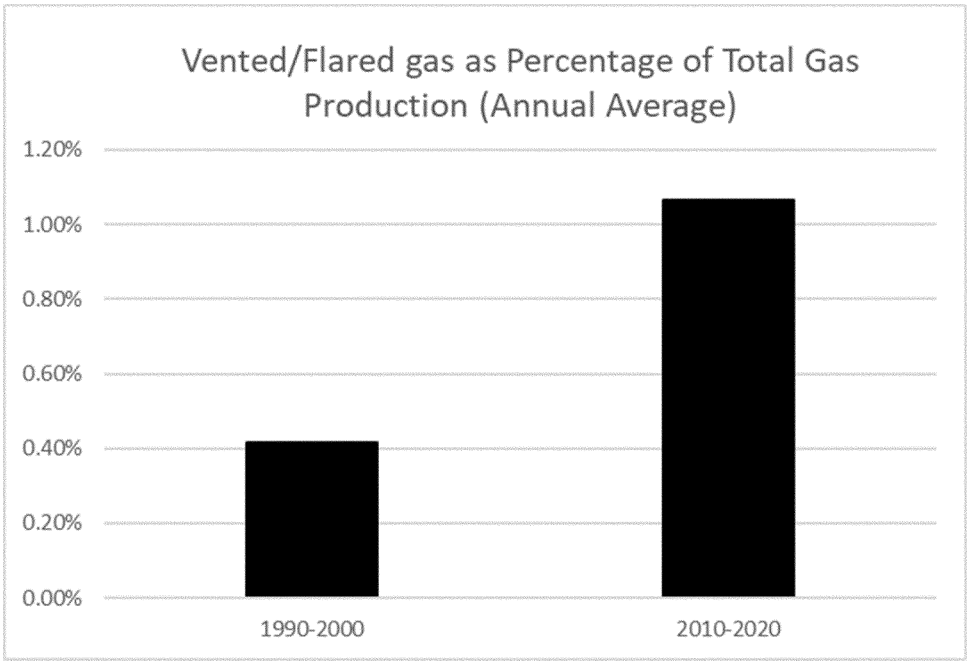

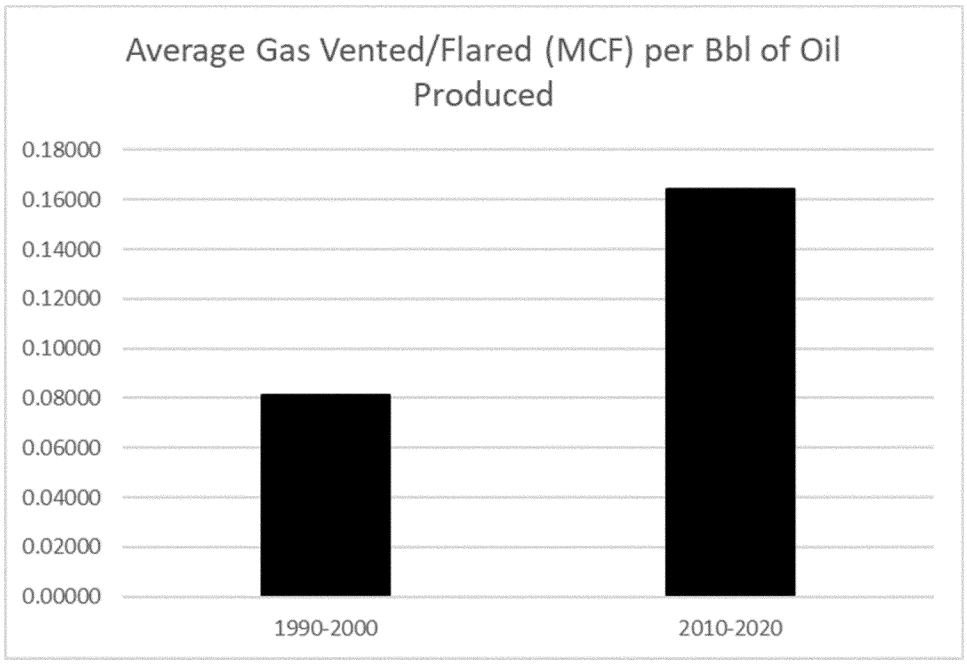

[20] In the proposed rule, the BLM erroneously stated that the average amount of vented and flared gas in thousands of cubic feet (Mcf) per barrel (bbl) of oil production was 0.8148 Mcf/bbl from 1990 to 2000, which rose to 1.6418 Mcf/bbl from 2010 to 2020. The correct average amounts are 0.08148 Mcf/bbl of vented and flared gas from 1990 to 2000, which rose to 0.16418 Mcf/bbl from 2010 to 2020. The accompanying graph, which appeared in the proposed and final rules, is accurate and remains unchanged. Accordingly, the BLM is revising the cited average amounts to reflect the information provided in the accompanying graph.

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Recent studies have identified three other major sources of gas losses during the oil and gas production process: emissions from natural-gas-activated pneumatic equipment, venting from oil storage tanks, and equipment leaks.[21] The EPA estimates that, nationwide, 36.2 Bcf of methane was emitted from pneumatic controllers and 4.9 Bcf of methane was emitted from equipment leaks at upstream oil and gas production sites in the United States in 2019.[22] The BLM estimates that 13 Bcf of natural gas was lost from pneumatic devices on Federal and Indian lands in 2019. The BLM estimates that an additional 0.86 Bcf of gas was lost due to equipment leaks from Federal natural gas production operations not subject at the time to State or EPA (LDAR) requirements. Notably, leakage appears to be exacerbated in areas where there is insufficient infrastructure for natural gas gathering, processing, and transportation [23]—a known issue in basins such as the Permian and Bakken, where substantial BLM-managed oil and gas production occurs. Finally, the BLM estimates that 17.9 Bcf of natural gas was emitted from storage tanks on Federal and Indian lands in 2019. Losses from pneumatic equipment, leaks, and storage tanks would be valued at $53.7 million dollars (at $3/Mcf) in 2019.

Apart from undue waste, excessive venting, flaring, and leaks by Federal oil and gas lessees also impose three additional harms. First, vented or leaked gas wastes valuable publicly or Indian owned resources that could be put to productive use, and deprives American taxpayers, Tribes, and States of substantial royalty revenues. Second, the wasted gas may harm local communities and surrounding areas through visual and noise impacts from flaring. And third, vented or leaked gas also contributes to climate change, because the primary constituent of natural gas is methane, an especially powerful greenhouse gas, with climate impacts roughly 28 to 36 times those of carbon dioxide (CO_2), if measured over a 100-year period, or 84 times those of CO_2 if measured over a 20-year period.[24] Thus, regulatory measures that encourage operators to conserve gas and avoid waste could, as a purely incidental matter, have ancillary effects on public health and the environment.[25]

Both the MLA and IRA distinguish an avoidable loss from an unavoidable loss. Indeed, some amount of venting and flaring is unavoidable and expected to occur during oil and gas exploration and production operations. For example, an operator may need to flare gas on a short-term basis as part of drilling operations, well completion, or production testing, among other situations. Longer-term flaring may occur in exceptional circumstances, which might include the drilling of and production from an exploratory well in a new field, where gas pipelines have not yet been built due to a lack of information regarding expected gas production.[26] In some fields, the overall quantity of gas produced may be so small that the development of gas-pipeline infrastructure may not be economically justified.

Although some venting or flaring may be unavoidable (and thus not waste) under some circumstances, operators have an affirmative obligation under Federal law to use reasonable precautions to prevent the waste of oil or gas developed from a lease. As other technologies and practices on oil and gas operations have evolved (as evidenced by changes in State and Federal regulations, and in industry best practices), so too measures that are considered reasonable to prevent waste should progress over time with advances in technology and changes in industry practice.

Further, operators' immediate economic interests may not always be served by minimizing the loss of natural gas, and BLM regulation is necessary to discourage operators from venting or flaring more gas than is operationally necessary. A prime example is the flaring of oil-well gas due to pipeline capacity constraints. Oil wells in certain fields are known to produce relatively large volumes of associated natural gas. Accordingly, natural-gas-capture infrastructure—including pipelines—has been built out in those fields, and the BLM expects operators to sell the associated gas they produce. However, it is not uncommon for the rate of oil-well development to outpace the capacity of the related gas-capture infrastructure. When the existing gas-capture infrastructure is overwhelmed, an operator is faced with a choice: flare the associated gas in order to continue oil production unabated or curtail oil production in order to conserve the associated gas. Absent clear requirements in NTL–4A as to whether a specific operational circumstance is an avoidable or unavoidable loss, an operator might conclude that the BLM would not make any avoidable loss determination if the operator were to flare, and thus waste associated gas to continue oil production—maximizing the operators' short-term profits by providing immediate revenue from oil production, even accounting for the loss of gas revenue. But the latter course of action may often best serve the public's interest by maximizing overall energy production (considering both production streams rather than producing oil and flaring gas) and royalty revenues.

Likewise, maximizing the recovery of gas by regularly inspecting for leaks may not always maximize the operator's profits. It is in these circumstances—where an operator's interest in maximizing short-term profits diverges from the public's interest in maximizing resource recovery—that BLM regulation is necessary and appropriate to ensure that operators take reasonable measures to prevent waste, as required by statute.

B. Legal Authority

Pursuant to a delegation of Secretarial authority, the BLM is authorized to regulate oil and gas exploration and production activities on Federal and Indian lands under a variety of statutes, including the MLA, the Mineral Leasing Act for Acquired Lands, the IRA, FOGRMA, the FLPMA, the Indian Mineral Leasing Act of 1938, the IMDA, and the Act of March 3, 1909.[27] These statutes authorize the Secretary of the Interior to promulgate such rules and regulations as may be necessary to carry out the statutes' various purposes.[28]

[21] Alvarez, et al., ''Assessment of methane emissions from the U.S. oil and gas supply chain,'' *Science* 361 (2018); *see also* 81 FR 83008, 83015–17 (Nov. 18, 2016).

[22] EPA, Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2019 at 3–73 (2019).

[23] Zhang, et al., ''Quantifying methane emissions from the largest oil-producing basin in the United States from space,'' *Science Advances* 6 (2020).

[24] See Intergovernmental Panel on Climate Change, Climate Change 2013: The Physical Science Basis, Chapter 8, *Anthropogenic and Natural Radiative Forcing,* at 714 (Table 8.7), *available at https://www.ipcc.ch/pdf/assessment-report/ar5/wg1/WG1AR5_Chapter08_FINAL.pdf.*

[25] The BLM notes that the BLM did not rely on such ancillary effects in developing this final rule. Rather, with the exception of the safety provisions in § 3179.50 (which also promotes worker health), the requirements of this final rule are independently justified as reasonable measures to prevent waste that would be expected, regardless of ancillary effects on public health or the environment.

[26] The BLM notes that, even in such exceptional circumstances, operators should be expected to take measures to avoid excessive flaring and this proposed rule would place limitations on royalty-free flaring from exploratory wells.

[27] Mineral Leasing Act, 30 U.S.C. 188–287; Mineral Leasing Act for Acquired Lands, 30 U.S.C. 351–360; Federal Oil and Gas Royalty Management Act, 30 U.S.C. 1701–1758; Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701–1785; Indian Mineral Leasing Act of 1938, 25 U.S.C. 396a–g; Indian Mineral Development Act of 1982, 25 U.S.C. 2101–2108; Act of March 3, 1909, 25 U.S.C. 396.

[28] 30 U.S.C. 189 (MLA); 30 U.S.C. 359 (MLAAL); 30 U.S.C. 1751(a) (FOGRMA); 43 U.S.C. 1740

7. Authority Regarding the Waste of Natural Gas

The MLA rests on the fundamental principle that the public should benefit from mineral production on public lands.[29] An important means of ensuring that the public benefits from mineral production on public lands is minimizing and deterring the waste of oil and gas produced from the Federal mineral estate. To this end, the MLA requires that all oil and gas lessees be subject to the condition that lessees ''use all reasonable precautions to prevent waste of oil or gas developed in the land . . . .'' [30] The MLA requires oil and gas lessees to exercise ''reasonable diligence, skill, and care'' in their operations and to observe ''such rules . . . for the prevention of undue waste as may be prescribed by [the] Secretary.'' [31] Lessees are not only responsible for taking measures to prevent waste, but also for making royalty payments on wasted oil and gas when waste occurs, in accordance with the MLA's assessment of royalties on all ''production removed or sold from the lease.'' [32] Furthermore, FOGRMA expressly makes lessees ''liable for royalty payments on oil or gas lost or wasted from a lease site when such loss or waste is due to negligence on the part of the operator of the lease, or due to the failure to comply with any rule or regulation, order or citation issued under [FOGRMA] or any mineral leasing law.'' [33]

In addition, on August 16, 2022, President Biden signed the IRA into law. Section 50263 of the IRA, which is entitled ''Royalties on All Extracted Methane,'' provides that, for leases issued after August 16, 2022, royalties are owed on all gas produced from Federal land, including gas that is consumed or lost by venting, flaring, or negligent releases through any equipment during upstream operations. This section further provides three exceptions to the general obligation to pay royalties on produced gas, namely on: ''(1) gas vented or flared for not longer than 48 hours in an emergency situation that poses a danger to human health, safety, or the environment; (2) gas used or consumed within the area of the lease, unit, or communitized area for the benefit of the lease, unit, or communitized area; or, (3) gas that is unavoidably lost.'' [34]

The BLM's authority to regulate the waste of Federal oil and gas is not limited to operations that occur on Federal lands, but also extends to operations on non-Federal lands where Federal oil and gas is produced under a unit or communitization agreement (CA). ''For the purpose of more properly conserving the natural resources of any oil or gas pool, field, or like area,'' the MLA authorizes lessees to operate their leases under a cooperative or unit plan of development and operation if the Secretary of the Interior determines such an arrangement to be necessary or advisable in the public interest.[35] The Secretary is authorized, with the consent of the lessees involved, to establish or alter drilling, producing, and royalty requirements and to make such regulations with respect to the leases under a cooperative or unit plan.[36] The MLA states that a cooperative or unit plan of development may contain a provision authorizing the Secretary to regulate the rate of development and the rate of production.[37] Accordingly, the BLM's standard form unit agreement provides that the BLM may regulate the quantity and rate of production in the interest of conservation.[38] The BLM's standard form CA provides that the BLM ''shall have the right of supervision over all fee and state mineral operations within the communitized area to the extent necessary to monitor production and measurement, and to assure that no avoidable loss of hydrocarbons occurs . . . .'' [39] As noted earlier, FOGRMA authorizes the BLM to assess royalties on gas lost or wasted from a ''lease site.'' The term ''lease site'' is broadly defined in FOGRMA as any lands or submerged lands, including the surface of a severed mineral estate, on which exploration for, or extraction or removal of, oil or gas is authorized pursuant to a lease.[40] The BLM maintains the authority to regulate the waste of Federal minerals from operations on those lands by requiring royalty payments and setting appropriate rates of development and production.[41]

2. Authority Regarding Environmental Impacts to the Public Lands

In addition to ensuring that the public receives a pecuniary benefit from oil and gas production from public lands, the BLM is also tasked with regulating the physical impacts of oil and gas development on public lands. The MLA directs the Secretary to ''regulate all surface-disturbing activities conducted pursuant to any lease'' and to ''determine reclamation and other actions as required in the interest of conservation of surface resources.'' [42]

The MLA requires oil and gas leases to include provisions ''for the protection of the interests of the United States . . . and for the safeguarding of the public welfare,'' including lease terms for purposes other than safeguarding the public resource of oil and gas.[43] The Secretary may suspend lease operations ''in the interest of conservation of natural resources,'' a phrase that encompasses not just conservation of mineral deposits, but also preventing environmental harm.[44] The MLA additionally requires oil and gas leases to contain ''a provision that such rules for the safety and welfare of the miners

(FLPMA); 25 U.S.C. 396d (IMLA); 25 U.S.C. 2107 (IMDA); 25 U.S.C. 396.

[29] *See, e.g., California Co.* v. *Udall,* 296 F.2d 384, 388 (D.C. Cir. 1961) (noting that the MLA was ''intended to promote wise development of . . . natural resources and to obtain for the public a reasonable financial return on assets that 'belong' to the public'').

[30] 30 U.S.C. 225.

[31] 30 U.S.C. 187.

[32] 30 U.S.C. 226(b)(1)(A).

[33] 30 U.S.C. 1756.

[34] 30 U.S.C. 1727.

[35] 30 U.S.C. 226(m).

[36] *Id.*

[37] *Id.*

[38] 43 CFR 3186.1, ¶ 21.

[39] See ''BLM Manual 3160–9–Communitization,'' Appendix 1, ¶ 12.

[40] See 30 U.S.C. 1702(6); *Maralex Resources, Inc.* v. *Bernhardt,* 913 F.3d 1189, 1200 (10th Cir. 2019) (''the statutory definition of 'lease site' necessarily includes any lands, including privately-owned lands, on which [production] of oil or gas is occurring pursuant to a communitization agreement''). Additionally, FOGRMA defines ''oil and gas'' broadly to mean ''any oil or gas originating from, *or allocated to,* the Outer Continental Shelf, Federal, or Indian lands.'' 30 U.S.C. 1702(9) (emphasis added).

[41] This conclusion is consistent with the assessment of the BLM's authority expressed by the court that vacated the 2016 Waste Prevention Rule. *See Wyoming* 493 F. Supp. 3d at 1081–85.

[42] 30 U.S.C. 226(g).

[43] *See Natural Resources Defense Council, Inc.* v. *Berklund,* 458 F. Supp. 925, 936 n.17 (D.D.C. 1978). The BLM acknowledges that the court that vacated the 2016 Waste Prevention Rule stated that ''it is not a reasonable interpretation of BLM's general authority under the MLA to 'safeguard[ ] the public welfare' as empowering the agency to regulate air emissions, particularly when Congress expressly delegated such authority to the EPA under the [Clean Air Act].'' *Wyoming* 493 F. Supp. 3d at 1067. The BLM further notes that the court that vacated the BLM's rescission of the 2016 Waste Prevention Rule found that the rescission failed to satisfy the BLM's ''statutory obligation'' to ''safeguard[ ] the public welfare,'' and stated that the MLA's ''public welfare'' provision supports the BLM's consideration of air emissions in promulgating its waste prevention regulations. *See California* v. *Bernhardt,* 472 F. Supp. 3d 573, 616 (N.D. Cal. 2020). The BLM need not elaborate on the meaning of the MLA's ''public welfare'' provision in this rulemaking, as the BLM is proposing requirements that are independently justified as waste prevention measures and are not for environmental purposes. The one exception is § 3179.50, which does serve an environmental purpose, but is an exercise of the Secretary's authority to prescribe ''rules for the safety and welfare of the miners'' under 30 U.S.C. 187.

[44] 30 U.S.C. 209; *see also, e.g., Copper Valley Machine Works* v. *Andrus,* 653 F.2d 595, 601 & nn.7–8 (D.C. Cir. 1981); *Hoyl* v. *Babbitt,* 129 F.3d 1377, 1380 (10th Cir. 1997); *Getty Oil Co.* v. *Clark,* 614 F. Supp. 904, 916 (D. Wyo. 1985).

. . . as may be prescribed by the Secretary shall be observed.'' [45] Accordingly, the Department's regulations governing oil and gas operations on the public lands have long required operators to conduct operations in a manner that is protective of natural resources, environmental quality, and the health and safety of workers.[46]

FLPMA authorizes the BLM to ''regulate'' the ''use, occupancy, and development'' of the public lands via ''published rules.'' [47] FLPMA also mandates that the Secretary, ''[i]n managing the public lands . . . shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands.'' [48] In addition, section 102 of FLPMA declares a policy that the BLM should both protect the environment, as stated in paragraph 102(a)(8), and manage the land in such a manner as to provide for ''domestic sources of minerals'' and other resources, as stated in paragraph 102(a)(12).[49] With respect to protecting the environment, paragraph 102(a)(8) states the policy of the United States that lands be managed to ''protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resources, and archeological values . . . .'' [50]

FLPMA also requires the BLM to manage public lands under principles of multiple use and sustained yield.[51] The statutory definition of ''multiple use'' explicitly includes the consideration of environmental resources. ''Multiple use'' is a ''combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources . . . .'' [52] ''Multiple use'' also requires resources to be managed in a ''harmonious and coordinated'' manner ''without permanent impairment to the productivity of the land and the quality of the environment . . . .'' [53] Significantly, FLPMA directs the Secretary to consider ''the relative values of the resources and not necessarily . . . the combination of uses that will give the greatest economic return or the greatest unit output.'' [54]

The Secretary's management and regulation of Indian mineral interests carries with it the duty to act as a trustee for the benefit of the Indian mineral owners.[55] Congress has directed the Secretary to ''aggressively carry out [her] trust responsibility in the administration of Indian oil and gas.'' [56] In furtherance of her trust obligations, the Secretary has delegated regulatory authority for administering operations on Indian oil and gas leases to the BLM,[57] which has developed specialized expertise through regulating the production of oil and gas from public lands administered by the Department. In choosing from among reasonable regulatory alternatives for Indian mineral development, the BLM is obligated to adopt the alternative that is in the best interest of the Tribe and individual Indian mineral owners.[58] What is in the best interest of the Tribe and individual Indian mineral owners is determined by a consideration of all relevant factors, including economic considerations as well as potential environmental and social effects.[59]

C. Regulatory History

The BLM has a long history of regulating venting and flaring from onshore oil and gas operations. This section summarizes the BLM's historic practices, as well as the BLM's experience in two recent rulemakings related to venting and flaring.

8. Early Regulation of Surface Waste of Gas

The Department of the Interior has maintained regulations addressing the waste of gas through venting and flaring from onshore oil and gas leases since 1938. At that time, the Department's regulations required the United States to be compensated ''at full value'' for ''all gas wasted by blowing, release, escape into the air, or otherwise,'' except where such disposal was authorized under the laws of the United States and the State in which it occurred.[60] The regulations further provided that the production of oil or gas from the lease was to be restricted to such amounts as could be put to beneficial use and that, in order to avoid the excessive production of oil or gas, the Secretary could limit the rate of production based on the market demand for oil or the market demand for gas.[61]

By 1942, the Department's regulations contained a definition of ''waste of oil or gas.'' This definition included the ''physical waste of oil or gas,'' which was defined as ''the loss or destruction of oil or gas after recovery thereof such as to prevent proper utilization and beneficial use thereof, and the loss of oil or gas prior to recovery thereof by isolation or entrapment, by migration, by premature release of natural gas from solution in oil, or in any other manner such as to render impracticable the recovery of such oil or gas.'' [62] The regulations stated that a lessee was ''obligated to prevent the waste of oil or gas'' and, in order to avoid the physical waste of gas, the lessee was required to ''consume it beneficially or market it or return it to the productive formation.'' [63] The regulations stated that ''unavoidably lost'' gas was not subject to royalty, though the regulations did not define ''unavoidably lost.'' [64]

In 1974, the Secretary issued NTL–4, which established the following policy for royalties on gas production: Gas production subject to royalty shall include: (1) that gas (both dry and casing-head) which is produced and sold either on a lease basis or that which is allocated to a lease under the terms of an approved communitization or unitization agreement; (2) that gas which is vented or flared in well tests (drill-stem, completion, or production) on a lease, communitized tract, or unitized area; and, (3) that gas which is otherwise vented or flared on a lease, communitized tract, or unitized area with the prior written authorization of the Area Oil and Gas Supervisor (Supervisor).[65]

NTL–4 thus effectively required onshore oil and gas lessees to pay royalties on *all* gas produced, including gas that was unavoidably lost or used for production purposes. Various oil and gas companies sought judicial review of NTL–4. In 1978, the U.S. District Court for the District of Wyoming overturned NTL–4, holding that the MLA does not authorize the collection of royalties on gas production

[45] 30 U.S.C. 187.

[46] *See* 43 CFR 3162.5–1, 3162.5–3. The BLM promulgated those regulations in 1982. 47 FR 47765 (1982).

[47] 43 U.S.C. 1732(b).

[48] *Id.*

[49] 43 U.S.C. 1701; *Theodore Roosevelt Conservation P'ship* v. *Salazar,* 605 F. Supp. 2d 263, 281–82 (D.D.C. 2009).

[50] 43 U.S.C. 1701(a)(8); but see 43 U.S.C. 1701(b).

[51] *Id.* at 1702(c), 1732(a).

[52] 43 U.S.C. 1702(c).

[53] *Id.*

[54] *Id.*

[55] See *Woods Petroleum Corp.* v. *Department of Interior,* 47 F.3d 1032, 1038 (10th Cir. 1995) (en banc).

[56] 30 U.S.C. 1701(a)(4).

[57] 235 DM 1.1.K.

[58] *See Jicarilla Apache Tribe* v. *Supron Energy Corp.,* 728 F.2d 1555, 1567 (10th Cir. 1984) (Seymour, J., concurring in part and dissenting in part), adopted as majority opinion as modified *en banc,* 782 F.2d 855 (10th Cir. 1986).

[59] *See* 25 CFR 211.3.

[60] 30 CFR 221.5(h) (1938).

[61] *Id.* 221.27.

[62] 30 CFR 221.6(n) (1942).

[63] *Id.* 221.35.

[64] *Id.* 221.44.

[65] *See* 44 FR 76600 (Dec. 27, 1979).

that is unavoidably lost or used in lease operations.[66]

2. NTL–4A

From January 1980 to January 2017, the Department of the Interior's instructions governing the venting and flaring of gas from onshore oil and gas leases were contained in ''Notice to Lessees and Operators of Onshore Federal and Indian Oil and Gas Leases: Royalty or Compensation for Oil and Gas Lost'' (''NTL–4A'').[67] NTL–4A was issued by the U.S. Geological Survey (USGS), which was the Interior bureau tasked with oversight of Federal onshore oil and gas production at the time.

Under NTL–4A, operators were required to pay royalties on ''avoidably lost'' gas—*i.e.,* gas lost due to the operator's negligence, failure to take reasonable precautions to prevent or control the loss, or failure to comply with lease terms, regulations, or BLM orders. NTL–4A expressly authorized royalty-free venting and flaring ''on a short-term basis'' during emergencies, well purging and evaluation tests, initial production tests, and routine and special well tests. NTL–4A prohibited the flaring of gas from gas wells under any other circumstances. For gas produced from oil wells, however, NTL–4A authorized (but did not mandate) the BLM to approve flaring where conservation of the gas was not ''economically justified'' because it would ''lead to the premature abandonment of recoverable oil reserves and ultimately to a greater loss of equivalent energy than would be recovered if the venting or flaring were permitted to continue . . . .'' [68] NTL–4A stated that, ''when evaluating the feasibility of requiring conservation of the gas, the total leasehold production, including oil and gas, as well as the economics of a field-wide plan,'' must be considered. Finally, under NTL–4A, the loss of gas vapors from storage tanks was considered ''unavoidably lost,'' unless the BLM ''determine[d] that the recovery of such vapors would be warranted . . . .'' [69]

Soon after issuing NTL–4A, the USGS issued guidelines and procedures for implementing NTL–4A, which were published in the Conservation Division Manual (CDM) Part 644, Chapter 5.[70] Among other things, the CDM provided guidance regarding applications to flare oil-well gas. Specifically, the CDM provided guidance for responding to a lessee's contention ''that reserves of casinghead gas are inadequate to support the installation of facilities for gas collection and sale . . . .'' [71] The CDM explained that, ''[f]rom an economic basis, all leasehold production must be considered; the major concern is profitable operation of the lease, not just profitable disposition of the gas.'' [72] The CDM further explained that the ''economics of conserving gas must be on a field-wide basis, and the Supervisor must consider the feasibility of a joint operation between all other lessees/operators in the field or area.'' [73] Thus, the economic standard for obtaining approval to flare oil-well gas under NTL–4A was on its face a demanding one. The fact that the capture and sale of oil-well gas from an individual lease would not pay for itself was not sufficient to justify royalty-free flaring of the gas.

The CDM also provided guidance for venting and flaring situations involving both Federal and non-Federal lands. In such cases, the BLM was directed to contact the appropriate State agency to work jointly for optimum gas conservation. However, where such a cooperative effort was not possible, the BLM was directed to ''proceed unilaterally to take action to prevent unnecessary venting or flaring from Federal lands.''

Under the plain terms of NTL–4A, flaring without prior approval (outside of the short-term circumstances specified in Sections II and III of NTL–4A) constituted a royalty-bearing loss of gas, regardless of the economic circumstances. The BLM originally applied NTL–4A to that effect, and this practice was upheld by the Interior Board of Land Appeals. *See Lomax Exploration Co.,* 105 IBLA 1 (1988). However, the BLM changed this policy in Instruction Memorandum No. 87–652 (Aug. 17, 1987), which required the BLM to provide an operator with an207pportuneity to demonstrate, after the fact, that capturing the gas was not economically justified. *See Ladd Petroleum Corp.,* 107 IBLA 5 (1989).

Even so, the number of applications for royalty-free flaring received by the BLM increased dramatically between 2005 and 2016: in 2005, the BLM received just 75 applications to vent or flare gas, while in 2015 it received 2,901 applications.[74] The following table shows the number of applications to vent or flare gas received by the BLM through 2021, but it does not reflect when the venting or flaring occurred.[75]

Year	Number of applications received to vent or flare gas
2015	2,900
2016	2,637
2017	2,162
2018	2,095
2019	2,901
2020	2,386
2021	922

Both the 2016 Waste Prevention Rule and the 2018 Revision Rule would have dispensed with case-by-case flaring approvals, but because those rules were both struck down, post-2016 flaring application data does not provide a useful comparison between the 2016 Waste Prevention Rule and NTL–4A. In addition, there is no useful comparison because the 2016 Waste Prevention Rule was never in effect and the 2018 revision rule was in effect for less than 2 years. Most of the applications to flare royalty-free were submitted to the field offices in New Mexico, Montana, and the Dakotas, which oversee Federal and Indian mineral interests in unconventional plays where oil production is accompanied by large volumes of associated gas. Notably, the vast majority of these applications involved wells that were connected to a gas pipeline but flared due to pipeline capacity constraints.

3. 2016 Waste Prevention Rule

On November 18, 2016, the BLM issued a final rule intended to reduce the waste of Federal and Indian gas through venting, flaring, and leaks (''2016 Waste Prevention Rule'').[76] The 2016 Waste Prevention Rule replaced NTL–4A and became effective on January 17, 2017. The BLM's development of the 2016 Waste Prevention Rule was prompted by a

[66] *Marathon Oil Co.* v. *Andrus,* 452 F. Supp. 548, 553 (D. Wyo. 1978).

[67] 44 FR 76600 (Dec. 27, 1979).

[68] *Id.* at 76601 (Dec. 27, 1979).

[69] Id.

[70] Geological Survey Conservation Division Manual, Part 644 Producing Operations Chapter 5 Waste Prevention/Beneficial Use, 6–23–80 (Release No. 68).

[71] *Id.* at 644.53F.

[72] *Id.*

[73] *Id.*

[74] Following publication of the proposed rule, the BLM re-queried the Automated Fluid Minerals Support System (AFMSS) to obtain the number of venting and flaring sundry notices in the database. The number of sundry notices has been updated in the final rule to reflect the updated query.

[75] The BLM applies the venting and flaring rule that was in effect at the time the flaring occurred, not when the application was received, which may be later in time than the flaring, even years later. See, *e.g.,* Ladd Petroleum Corp., 107 IBLA 5 (1989). The application, therefore, does not provide for straightforward comparison of the effects of regulatory changes, particularly given recent court orders setting aside the BLM's rules in this sphere.

[76] 81 FR 83008 (Nov. 18, 2016).

combination of factors, including the substantial increase in flaring over the previous decade, the growing number of applications to vent or flare royalty-free, new information regarding the quantities of gas lost through venting and leaks, and concerns expressed by oversight entities such as the U.S. Government Accountability Office (GAO).[77]

The 2016 Waste Prevention Rule applied to all onshore Federal and Indian oil and gas leases, units, and communitized areas. The key components of the 2016 Waste Prevention Rule were:

- A requirement that APDs be accompanied by a WMP that would detail anticipated gas production and opportunities to conserve the gas;
- A provision specifying the various circumstances under which a loss of oil or gas would be ''avoidably lost'' and therefore royalty-bearing;
- A requirement that operators capture (rather than flare) a certain percentage of the gas they produce;
- Equipment requirements for pneumatic controllers, pneumatic diaphragm pumps, and storage vessels (tanks); and
- LDAR provisions requiring semiannual lease site inspections, the use of specified instruments and methods, and recordkeeping and reporting.

The rule's ''capture percentage'' requirements were intended to address the routine flaring of gas from oil wells. The rule required an operator to capture, rather than flare, a certain percentage of the gas produced from the operator's ''development oil wells.'' The required capture percentage would increase over a 10-year period, starting at 85 percent in 2018 and ultimately reaching 98 percent in 2026. Gas flared in excess of the capture requirements would be royalty bearing.

In the 2016 Waste Prevention Rule, the BLM recognized that the EPA had promulgated emissions limitations for pneumatic equipment and storage tanks as well as LDAR requirements for new and modified sources in the oil and gas production sector pursuant to its authority under the Clean Air Act (CAA). The BLM further recognized that those EPA requirements would have the effect of reducing the waste of gas from leases subject to those requirements. In order to avoid unnecessary duplication or conflict between the BLM and EPA regulations, the 2016 Waste Prevention Rule allowed for operators to comply with the analogous EPA regulations as an alternative means of compliance with BLM's requirements.[78]

The capture percentage, pneumatic equipment, storage tanks, and LDAR requirements of the 2016 Rule were each subject to phase-in periods, and the rule allowed operators to obtain exemptions or reduced requirements where compliance would ''cause the operator to cease production and abandon significant recoverable oil reserves under the lease.'' [79] The BLM's RIA for the 2016 Waste Prevention rule estimated that the rule would impose costs of between $110 million and $275 million per year, while generating benefits of between $20 million and $157 million per year worth of additional gas captured and between $189 million and $247 million per year in quantified social benefits (in the form of forgone methane emissions).[80]

Certain States and operators filed petitions for judicial review of the Waste Prevention Rule in the U.S. District Court for the District of Wyoming.[81] Following the change in Administration in January 2017, the litigation was effectively paused in response to the BLM's administrative actions to suspend the rule. After those actions were invalidated by a different court,[82] the Wyoming court stayed implementation of the capture percentage, pneumatic equipment, storage tank, and LDAR requirements, and stayed the litigation pending finalization of the BLM's voluntary revision of the 2016 Waste Prevention Rule.

4. 2018 Revision of Waste Prevention Rule

On September 28, 2018, the BLM issued a final rule substantially revising the 2016 Waste Prevention Rule (''2018 Revision Rule'').[83] In the 2018 Revision Rule, the BLM rescinded the WMP, gas capture percentage, pneumatic equipment, storage tank, and LDAR requirements of the 2016 Waste Prevention Rule. The BLM also revised the remaining provisions of the rule to largely reflect the language of NTL–4A. Finally, the BLM established a new policy of deferring to State regulations for determining when the routine flaring of oil-well gas is royalty-free.

In the 2018 Revision Rule, the BLM concluded that the 2016 Waste Prevention Rule exceeded the BLM's statutory authority by imposing requirements with compliance costs that exceed the value of the gas that would be conserved, thus violating the non-statutory ''prudent operator'' standard that some believed to have been implicitly incorporated into the MLA when it was adopted in 1920. The BLM also stated that the 2016 Waste Prevention Rule created a risk of premature shut-ins of marginal wells, reasoning that the compliance costs associated with the 2016 Waste Prevention Rule would represent a significant proportion of a marginal well's revenue. Contrary to what the BLM had found in 2016, the BLM stated in the 2018 Revision Rule that existing State flaring regulations provided sufficient assurance against excessive flaring.

The RIA for the 2018 Revision Rule found that the economic benefits of the 2018 Revision Rule (*i.e.,* reduced compliance costs) would significantly outweigh its economic costs (*i.e.,* forgone gas production and additional methane emissions).[84] This result was based in large part on the use of a narrowly defined ''domestic'' social cost of methane metric. That metric purported to capture domestic methane costs. However, because it focused on impacts within U.S. borders, it underestimated the full benefits of GHG mitigation accruing to U.S. citizens and residents and thus drastically reduced the monetized climate benefits of the 2016 Waste Prevention Rule relative to

[77] *Id.* at 83014–83017; GAO, ''Federal Oil and Gas Leases—Opportunities Exist to Capture Vented and Flared Gas, Which Would Increase Royalty Payments and Reduce Greenhouse Gases'' (Oct. 2010); GAO, ''OIL AND GAS—Interior Could Do More to Account for and Manage Natural Gas Emissions'' (July 2016).

[78] See 81 FR 83008, 83018–19, 83085–89 (Nov. 18, 2016).

[79] See 81 FR 83082–88 (Nov. 18, 2016).

[80] BLM (2016). Regulatory Impact Analysis for: Revisions to 43 CFR 3100 (Onshore Oil and Gas Leasing) and 43 CFR 3600 (Onshore Oil and Gas Operations) Additions of 43 CFR 3178 (Royalty-Free Use of Lease Production) and 43 CFR 3179 (Waste Prevention and Resource Conservation). p. 4–5. Available at *https://www.regulations.gov/document/BLM-2016-0001-9127.*

[81] *Wyoming* v. *DOI,* Case No. 2:16–cv–00285–SWS (D. Wyo.).

[82] See *California* v. *BLM,* No. 3:17–CV–03804–EDL (N.D. Cal.); *Sierra Club* v. *Zinke,* No. 3:17–CV–03885–EDL (N.D. Cal.). On June 15, 2017, the BLM announced that it would postpone the January 17, 2018, compliance dates to phase-in certain parts of the 2016 Waste Prevention Rule. *Wyoming* at 1053. Several Intervenors-Respondents from the *Wyoming* litigation, as well as the Attorney Generals from the States of California and New Mexico challenged the BLM's 2017 postponement decision in the aforementioned cases in the Northern District of California. *Id.* at 1053–54. This California district court held that the BLM's 2017 postponement notice was invalid, thereby resulting in the reinstatement of the phase-in dates for certain parts of the 2016 Waste Prevention Rule. *Id.* at 1054.

[83] 83 FR 49184 (Sept. 28, 2018).

[84] BLM (2018). Regulatory Impact Analysis for the Final Rule to Rescind or Revise Certain Requirements of the 2016 Waste Prevention Rule. p. 2–4. Available at *https://www.regulations.gov/document/BLM-2018-0001-223607.*

what had been estimated in the RIA for the 2016 Waste Prevention Rule.[85]

5. Judicial Review of the Revision Rule

In September 2018, a coalition of organizations and the States of California and New Mexico filed lawsuits challenging the 2018 Revision Rule in the U.S. District Court for the Northern District of California. On July 15, 2020, the district court ruled in favor of the plaintiffs. *California* v. *Bernhardt,* 472 F. Supp. 3d 573 (N.D. Cal. 2020). The court found that:

- The BLM's interpretation of its statutory authority in the 2018 Revision Rule was unjustifiably limited, failed to require lessees to use all reasonable precautions to prevent waste, and failed to meet the BLM's statutory mandate to protect the public welfare;
- The BLM's decision to defer to State flaring regulations was not supported by sufficient analysis or record evidence;
- The record did not support the BLM's claims that the 2016 Waste Prevention Rule posed excessive regulatory burdens and that its costs outweighed its benefits; and
- The BLM's cost-benefit analysis underlying the rule was flawed for a variety of reasons, including that the use of a ''domestic'' social cost of methane was unreasonable and not based on the best available science.

The court ordered that the 2018 Revision Rule be vacated in its entirety.[86]

6. Judicial Review of the 2016 Waste Prevention Rule

Following the decision in *California* v. *Bernhardt,* the Wyoming court lifted the stay on the litigation over the 2016 Waste Prevention Rule. In the briefing, the Department of the Interior confessed error on the grounds that the BLM exceeded its statutory authority and was ''arbitrary and capricious'' in promulgating the rule. In October 2020, the district court ruled in favor of the plaintiffs, finding that the BLM had exceeded its statutory authority and had been arbitrary and capricious in promulgating the 2016 Waste Prevention Rule. *Wyoming* v. *U.S. Dep't of the Interior,* 493 F. Supp. 3d 1046 (D. Wyo. 2020). Specifically, the court found that the 2016 Waste Prevention Rule was essentially an air quality regulation and that the BLM had usurped the authority to regulate air emissions that Congress had granted to EPA and the States in the CAA. The court found that the rule was not independently justified as a waste-prevention measure under the MLA. Rather, in the court's view, the record reflected that the BLM's primary concern was regulating methane emissions from existing oil and gas sources. The court faulted the BLM's rulemaking for imposing requirements beyond what could be expected of a ''prudent operator'' that develops the lease for the mutual profit of lessee and lessor. Finally, the court faulted the BLM for applying air quality regulations—as opposed to waste-prevention regulations—to unit and CA operations on non-Federal lands. The court ordered that the 2016 Waste Prevention Rule be vacated, thereby reinstating NTL–4A as the BLM's standard for managing venting and flaring from Federal oil and gas leases.

7. The Inflation Reduction Act

On August 16, 2022, President Biden signed the IRA into law.[87] The IRA contains a suite of provisions addressing onshore and offshore oil and gas development under Federal leases. For example, section 50265, *inter alia,* requires the Department to maintain a certain level of onshore oil and gas leasing activity as a prerequisite to approving renewable energy rights-of-way on Federal lands. Importantly, that provision of the IRA is accompanied by other provisions that serve to ensure that lessees pay fair and appropriate compensation to the Federal Government in exchange for the opportunity to conduct their industrial activities under Federal leases.

One such provision of the Act is section 50263, which is entitled, ''Royalties on All Extracted Methane.'' [88] Consistent with the MLA's assessment of royalties on all gas ''removed or sold from the lease'' [89] and FOGRMA's requirement that lessees pay royalties on lost or wasted gas,[90] section 50263 of the IRA provides that, for leases issued after the date of enactment of the Act, royalties are owed on all gas produced from Federal land, including gas that is consumed or lost by venting, flaring, or negligent releases through any equipment during upstream operations. Section 50263 further provides three exceptions to the general obligation to pay royalties on produced gas, namely: (1) gas that is vented or flared for not longer than 48 hours in an emergency situation that poses a danger to human health, safety, or the environment; (2) gas used or consumed within a lease, unit, or communitized area for the benefit of the lease, unit, or communitized area; and, (3) gas that is unavoidably lost.[91]

The BLM has for decades assessed royalties on upstream production and has exempted from royalties gas lost in emergency situations, ''beneficial use'' gas, and ''unavoidably lost'' gas. IRA section 50263 is consistent with the BLM's prior agency practice regarding emergency situations, beneficial use, and the unavoidable loss of gas, and it provides additional support for the approach set forth in this proposed rule. Importantly, IRA section 50263 confirms that the concepts of ''avoidable'' and ''unavoidable'' loss are appropriate for assessing royalties. Section 50263 also confirms that the United States' pecuniary interest in regulating losses extends to those from upstream equipment. But the IRA leaves certain questions open, such as what losses qualify as ''unavoidably lost'' and what qualifies as an ''emergency situation.'' Congress thus has left it to the BLM, as an exercise of the agency's expertise and judgment, to determine answers to the specific questions the IRA leaves open. As set forth below, this final rule addresses these questions in a manner that is consistent with the IRA's focus on (and the MLA's and FOGRMA's pre-existing emphasis on) ensuring that Federal lessees pay fair and appropriate compensation to the Federal Government in exchange for the opportunity to conduct their industrial activities under Federal leases.

D. The Final Rule

The BLM has authority under the MLA to promulgate such rules and regulations as may be necessary ''for the prevention of undue waste'' [92] and to ensure that lessees ''use all reasonable precautions to prevent waste of oil or gas.'' [93] For many years, the BLM has implemented this authority through restrictions on the venting and flaring of gas from onshore Federal oil and gas leases. However, as illustrated by the judicial decisions noted previously, before the IRA's enactment, courts disagreed about the full scope of the BLM's authority to regulate venting and flaring. Requirements that one court might consider necessary for the BLM to meet its statutory mandates might have been seen as regulatory overreach by another court. Consistent with the approach outlined in the proposed rule, and in light of all the statutory

[85] *See California* v. *Bernhardt,* 472 F. Supp. 3d 573, 611 (N.D. Cal. 2020).

[86] However, the court stayed vacatur until October 13, 2020.

[87] Public Law 117–169.

[88] 30 U.S.C. 1727.

[89] 30 U.S.C. 226(b).

[90] 30 U.S.C. 1756.

[91] 30 U.S.C. 1727.

[92] 30 U.S.C. 187.

[93] 30 U.S.C. 225.

authorities including the IRA, the BLM has chosen to focus on improving upon NTL–4A in a variety of ways without advancing elements of the 2016 Waste Prevention Rule that were the subject of certain judicial criticism.

As explained in more detail below and in Section IV, the Section-by-Section Discussion, this final rule makes substantial improvements in addressing the waste of Federal and Indian gas, while also addressing the *Wyoming* court's criticisms of the 2016 Waste Prevention Rule. First, the requirements unambiguously constitute reasonable waste prevention measures that should be expected of an operator. The requirements impose fewer overall costs than those of the 2016 Waste Prevention Rule and ensure either actual conservation of gas that would otherwise be wasted or compensation to the public and Indian mineral owners through royalty payments when gas is wasted. This contrasts with certain provisions in the 2016 Rule that would have reduced pollution—but not necessarily reduced waste—by allowing operators to comply with analogous EPA standards in place of the BLM requirements.

Second, to address the *Wyoming* court's ruling that the BLM's authority regarding unit and CA operations on non-Federal and non-Indian surface is limited, certain requirements in this final rule are narrower in scope than similar requirements in the 2016 Waste Prevention Rule. Specifically, the final rule's requirements pertaining to safety, storage tanks, and LDAR apply only to operations on Federal or Indian surface estates.

Third, the requirements are consistent with the ''prudent operator'' standard as that term has been applied in the oil and gas jurisprudence.

Fourth, the final rule has been developed with an eye towards avoiding excessive compliance burdens on marginal wells.

Finally, the BLM is expressly excluding the social cost of greenhouse gases from its decisions on any of the proposed waste prevention requirements, thereby addressing the *Wyoming* court's concern that the 2016 Rule was inappropriately supported by ''climate change benefits.''

The provisions of this final rule serve straightforward waste prevention objectives by promoting gas conservation. To avoid situations where oil-well development outpaces the capacity of the available gas capture infrastructure, the BLM is requiring operators to submit either a WMP, including certification of a valid, executed contract to sell the associated gas, or a self-certification of 100 percent capture of associated gas with oil-well APDs. The BLM recognizes that not all venting and flaring can be prevented. In the circumstances in which some venting or flaring cannot be prevented (*e.g.,* initial production tests or emergencies), the BLM is establishing appropriate time or volume limits on royalty-free venting or flaring. The BLM is addressing the problem of intermittent flaring due to pipeline capacity constraints by establishing a volume limit based on oil production for royalty-free flaring caused by inadequate capture infrastructure. Requiring royalty payments on venting and flaring that exceeds the established limits will both discourage waste and ensure that Federal and Indian royalty revenues are not reduced by an operator's wasteful practices. The BLM estimates that the royalty-free flaring limits of the final rule would generate $51 million per year in additional royalties. See section 7.6 of the RIA for more information.

This final rule also contains LDAR provisions intended to reduce losses of natural gas. Unlike the 2016 Waste Prevention Rule—which extended these requirements to State and private surface estates in certain situations—the requirements in this final rule apply only to operations on the Federal or Indian surface estate, where the BLM has express authority and responsibility to regulate for safety, the prevention of waste, and the payment of Federal or Indian royalties. These requirements would not apply to operations that occur on State or private surface tracts committed to a Federal unit or CA. The BLM estimates that the requirements of this final rule regarding LDAR would result in the conservation of up to 0.5 Bcf of gas each year.

The BLM acknowledges that the contents of this final rule differ in some regards from the 2018 Revision Rule's narrower interpretation of the BLM's statutory authority.[94] Consistent with the BLM's understanding of its authority for decades prior to 2018, the BLM has reconsidered the relevant conclusions of the 2018 Revision Rule and now rejects those conclusions for the following reasons. To begin, nothing in the MLA's plain text—which requires lessees to take ''all reasonable precautions to prevent waste'' and to abide by rules and regulations issued ''for the prevention of undue waste''—suggests that the BLM's authority is limited to the promulgation of rules that effectively pay for themselves (as measured by balancing compliance costs against the value of the recovered gas).[95] Consistent with this text, the BLM's longstanding policy governing venting and flaring has assessed the economic feasibility of gas conservation in the context of ''the total leasehold production, including oil and gas, as well as the economics of a field-wide plan.'' *See supra,* Part III.C.2. As the CDM made clear, the BLM's concern under the MLA for nearly four decades prior to the 2018 Revision Rule was ''profitable operation of the lease, not just profitable disposition of the gas.''

Despite suggestions to the contrary in the 2018 Revision Rule, the focus of the final rule on *overall* ultimate resource recovery, not lessee profits vis-à-vis wasted gas, is consistent with the non-statutory ''prudent operator'' standard. While the prudent operator standard rests on an expectation of ''mutually profitable development of the lease's mineral resources,'' [96] it does not follow that lessees can maximize their profit by wasting recoverable hydrocarbon resources without regard for the lessor's lost royalty revenues or the lessor's interest in conserving the gas for future disposition. To the contrary, lessees have an obligation of reasonable diligence in the development of the leased resources, rooted in due regard for the interests of both the lessee and the lessor.[97] And in the MLA, FOGRMA, and the IRA, Congress enshrined the United States' interest, as a mineral lessor, in avoiding waste and maximizing royalty revenues.[98] The BLM, in managing oil and gas resources on behalf of the United States, may value more production—considering both oil and gas production—over a

[94] *See* 83 FR 49184, 49185–86 (Sept. 28, 2018).

[95] 30 U.S.C. 187, 225. Indeed, such a requirement would imperil nearly all operational regulations.

[96] *Wyoming* at 1072.

[97] *See Id.; see also Sinclair Oil & Gas Co.* v. *Bishop,* 441 P.2d 436, 447 (Okla. 1967) (''Necessarily, we determine the lessee was acting prudently when he ascertained that it was illegal and improper to flare gas in the quantities shown by the evidence, in order to produce the unallocated allowable of oil.''); *Tr. Co. of Chicago* v. *Samedan Oil Corp.,* 192 F.2d 282, 284 (10th Cir. 1951) (''A first consideration is the precept that a prudent operator may not act only for his self-interest. He must not forget that the primary consideration to the lessor for the lease is royalty from the production of the lease free of cost of development and operation.'').

[98] *See* 30 U.S.C. 187, 225, 226(m), 1756; *see also California Co.* v. *Udall,* 296 F.2d 384, 388 (D.C. Cir. 1961) (''[The Secretary] has a responsibility to insure that these resources are not physically wasted and that their extraction accords with prudent principles of conservation. To protect the public's royalty interest he may determine that minerals are being sold at less than reasonable value. Under existing regulations he can restrict a lessee's production to an amount commensurate with market demand, and thus protect the public's royalty interest by preventing depression of the market.'').

longer time period more highly than does an operator, who might be more focused on generating near-term profits. None of the authorities previously relied upon by the BLM to interpret the ''prudent operator'' standard forecloses any Secretarial action that might marginally affect lessee profits.[99]

In contrast to NTL–4A, this final rule does not allow operators to request that flared oil-well gas be deemed royalty-free based on case-by-case economic assessments. There are a number of reasons for this approach. In the first instance, Federal law does not require the American taxpayers to forgo royalties on wasted gas due to an individual operator's economic circumstances. Although it was the BLM's practice to engage in case-by-case economic assessments under NTL–4A, that approach is no longer appropriate, as the practical realities of oilfield development have changed dramatically since 1980. As the U.S. Department of Energy explained in a recent report, ''flaring has become more of an issue with the rapid development of unconventional tight oil and gas resources over the past two decades'' that has ''brought online hydrocarbon resources that vary in their characteristics and proportions of natural gas, natural gas liquids and crude oil.'' [100] Consistent with these developments, and as discussed in Section III.A, the BLM has witnessed a massive increase in the amount of venting and flaring from the 1990's to the 2010's. The average amount of annual venting and flaring from Federal and Indian leases between 1990 and 2000 was 11 Bcf. Between 2010 and 2020, it quadrupled to an average of 44.2 Bcf per year, with a 157 percent increase in the amount of vented and flared gas as a percentage of gas production, and a 102 percent increase in the amount of vented and flared gas per barrel of oil produced. The upward trend in venting and flaring suggests is likely to continue.

Based on EIA data from 1990 through 2022, U.S. vented and flared volumes continue an upward trend that tends to mirror U.S. oil production,[101] which raises a concern that new exploration and development is outpacing infrastructure construction. Oil production in 2019 reached a record high level of 4.5 billion barrels of oil despite a relatively low average annual spot price of $57 per barrel. Operators may have increased oil production in 2019 to maintain revenues given the lower pricing. An increase in oil production to maintain revenues may have led to the very high flare volume in that year. While the vented and flared volume has decreased since 2019—likely due to unrepresentative production during the COVID 19 pandemic that resulted in reduced drilling and completions during this time—the data demonstrates that, generally, venting and flaring has continued to increase since 1990, particularly as compared to the production of oil. This rule will work toward reducing the waste from Federal and Indian mineral estates.[102]

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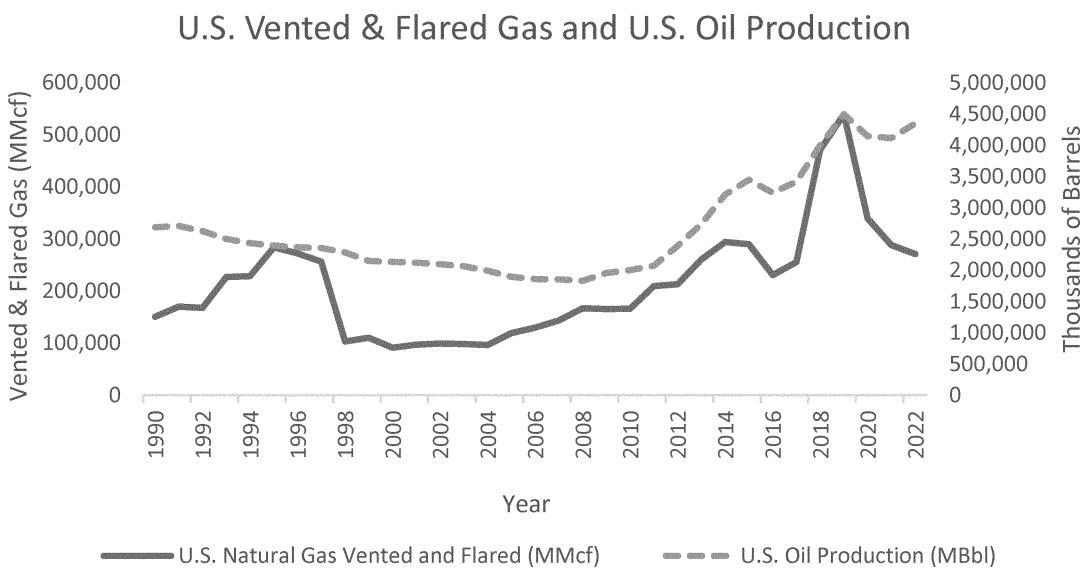
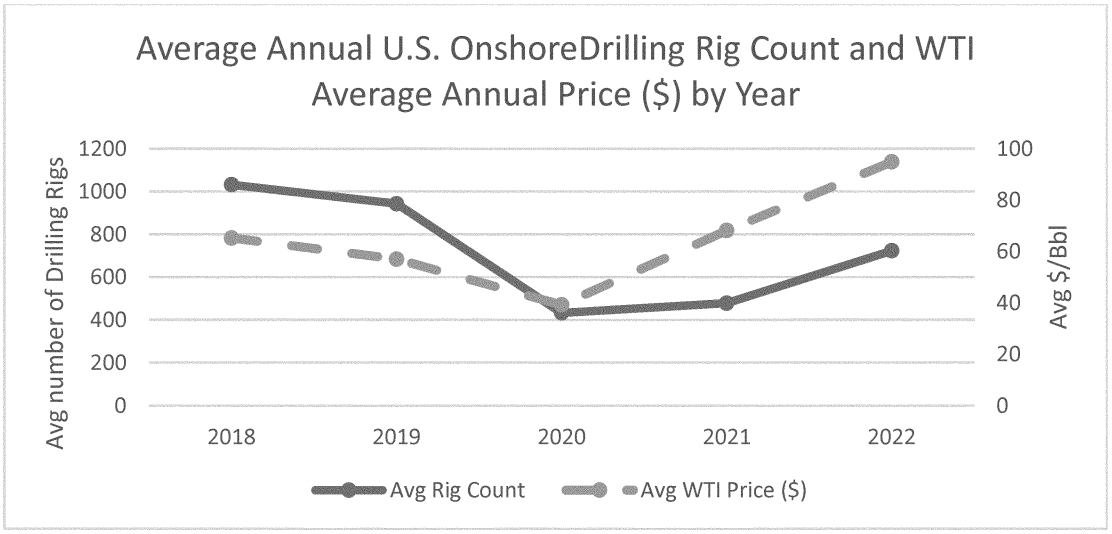


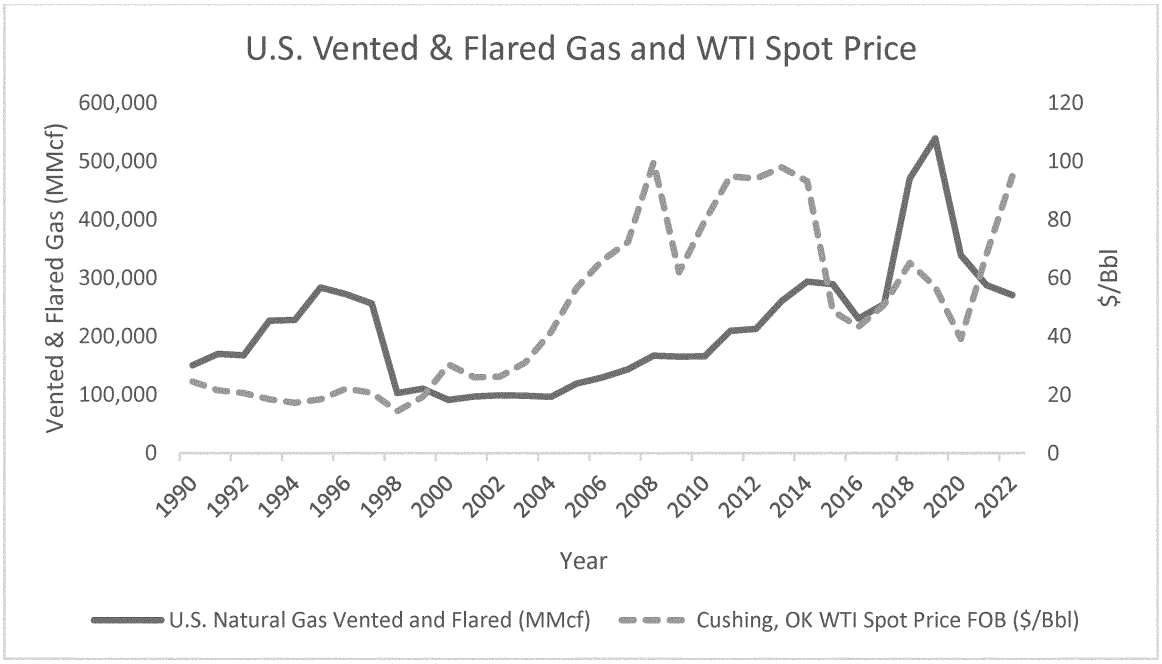
[99] *Cf. California* v. *Bernhardt,* 472 F. Supp. 3d 573, 596 (N.D. Cal. 2020) (''The statutory language demonstrates on its face that any consideration of waste management limited to the *economics* of individual well-operators would ignore express statutory mandates concerning BLM's public welfare obligations.'').

[100] U.S. Department of Energy, Office of Fossil Energy, Office of Oil and Natural Gas, ''Natural Gas Flaring and Venting: State and Federal Regulatory Overview, Trends, and Impacts'' (June 2019). *https://www.energy.gov/fecm/articles/natural-gas-flaring-and-venting-regulations-report.*

[101] *https://www.eia.gov/dnav/ng/ng_prod_sum_a_EPG0_VGV_mmcf_m.htm.*

[102] For the following tables, see *https://rigcount.bakerhughes.com/na-rig-count/, https://www.eia.gov/dnav/pet/hist/rwtcA.htm.*





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The related increase in the number of flaring applications—from 75 in 2005, to 922 in 2021 has created a significant administrative burden for the BLM.[103] It has also created an estimated information collection burden of approximately 23,228 total annual burden hours potentially incurred by operators and has led to significant uncertainty for operators as hundreds of applications wait to be processed.

Finally, the BLM notes that the bulk of the recent royalty-free flaring applications has concerned flaring from wells that are connected to pipeline infrastructure. The purpose of the economic inquiry under NTL–4A, by contrast, was to determine whether the volumes of associated gas production would make the *installation* of gas-capture infrastructure economically viable. CDM 644.5.3E and F. Where the gas-capture infrastructure has already been built out, there is no need to consider the cost and value of its installation against the volume of associated gas production. The BLM understands that, as posited by a commenter, there may be instances where a gas pipeline connected to an oil well is not able to accept that well's gas for a time. In those circumstances, an operator may temporarily curtail production or shut in the well instead of wasting the gas. Oil and gas production should resume when the pipeline can accept the gas.

One of the primary concerns underlying the BLM's promulgation of the 2018 Revision Rule was the compliance burden on ''marginal wells,'' *i.e.,* wells that produce approximately 10 barrels of oil or 60 Mcf of natural gas per day or less.[104] The court that vacated the 2016 Waste Prevention Rule faulted the BLM for failing to adequately assess the impact of that rule on marginal wells.[105] The court that vacated the 2018 Revision Rule, however, rejected that concern as unfounded.[106] The BLM does not wish to impose requirements that

[103] See table in the Executive Summary.

[104] 83 FR 49184, 49187 (Sept 28, 2018).

[105] *Wyoming* 493 F. Supp. 3d at 1075–78.

[106] *California* v. *Bernhardt,* 472 F. Supp. 3d 573, 606 (N.D. Cal. 2020).

inadvertently cause recoverable oil or gas resources to be stranded due to premature lease abandonment, but, as the MLA makes clear, any such considerations go to whether particular conservation measures are reasonable under the MLA, not whether marginal operations must take reasonable measures in the first instance. 30 U.S.C. 225. For example, there is no real risk of premature abandonment by requiring the operator of a marginal gas well to minimize the loss of gas during liquids unloading operations, as required in this rule. Under the final rule, an operator of a marginal gas well may vent gas during liquids unloading operations royalty-free for 24 hours. If the gas well is not put into production within 24 hours and maintenance operations must continue, the volume of gas vented is likely very small and the flowing pressure very low—otherwise, the operator would be returning the well to production. Thus, the marginal time that it takes an operator to continue liquids unloading beyond the initial 24 hours will not result in significant vented gas and corresponding royalty obligation. Furthermore, the BLM has provisions for royalty rate reductions in 43 CFR 3103.4–1 to encourage the greatest ultimate recovery of oil or gas. Therefore, in the unlikely event that compliance with the final rule would lead to an operator's premature abandonment of a well, an operator may seek royalty relief to continue operations.

The BLM has developed this final rule to avoid excessive and unreasonable compliance burdens on marginal wells when balanced against the need to reduce waste. In the 2018 Revision Rule, the BLM noted that the provisions of the 2016 Waste Prevention Rule that placed a particular burden on marginal wells were those pertaining to pneumatic controllers, pneumatic diaphragm pumps, and LDAR. In this final rule, the requirements for LDAR only apply to Federal or Indian minerals produced from facilities located on a Federal or Indian surface estate, thereby limiting the number of operators to which the LDAR program applies. In addition, the BLM has not included in this final rule the provisions in the proposed rule regarding pneumatic controllers and diaphragm pumps.

The BLM acknowledges that, in the 2018 Revision Rule, it asserted that additional restrictions on flaring were unnecessary because the States with the most significant BLM-managed oil and gas production impose regulatory restrictions on flaring from oil wells and that these State regulations ''provide[d] a reasonable assurance . . . that the waste of associated gas will be controlled.'' [107] This assertion directly contradicted the BLM's prior findings during the promulgation of the 2016 Waste Prevention Rule, and a district court held that the BLM's decision to rely on State flaring regulations was unjustified based on the record evidence.[108]

For this rulemaking, the BLM analyzed the State regulations governing flaring, venting, and leaks in the 10 States responsible for 99 percent of Federal oil and gas production: Alaska, California, Colorado, Montana, New Mexico, North Dakota, Oklahoma, Texas, Utah, and Wyoming. Summaries of these regulations were collected in a table that is available in the docket for this rulemaking at *www.regulations.gov.* While there have been notable advancements in some States since the promulgation of the 2016 Waste Prevention Rule—for example, new comprehensive flaring regulations have since been adopted in New Mexico and Colorado, and new requirements for storage tanks, pneumatic equipment, and LDAR have been adopted in Colorado and Utah—State regulations vary widely in their scope and stringency.[109] And, importantly, many of the State flaring regulations reserve substantial discretion to the State agencies to authorize additional flaring.[110] That discretion creates significant uncertainty about the extent to which the BLM can rely on those regulations to protect the interests of the United States and Indian mineral owners in minimizing waste and maximizing royalty revenues.

In its comments on the proposed rule, the Wyoming Oil and Gas Conservation Commission asserts that the BLM incorrectly characterizes Wyoming's regulations regarding flaring and gas capture plan requirements. Specifically, Wyoming challenges language in the proposed rule that ''Wyoming's gas capture plan requirements are not triggered until after flaring becomes a problem at the well.'' [111] Specifically, the State objects to the proposed rule's description of Wyoming regulations as triggering a plan only after a flaring ''issue,'' explaining that, in the Commission's view, ''[t]he operator must submit a gas capture plan, among other information . . . before flaring or it would need to limit flaring to 60 mcf/d or be in violation of the [applicable] rule.'' But whether or not these contingencies are properly characterized as an ''issue,'' the BLM's point—that it was deemed a plan to be useful when the APD is submitted—stands. State gas capture plan requirements, by themselves, do not provide the BLM, in its capacity as regulator and steward of the Federal mineral estate, with an opportunity to render its own determinations regarding potential waste when processing an APD.

North Dakota in its comments on the proposed rule takes issue with the way the BLM characterized the allowance for variances in North Dakota's gas capture regulations. Specifically, the State asserted: ''In its proposed rule publication, the BLM disingenuously criticizes North Dakota's gas capture regulations for allowing variances, and then inconsistently proposes a rule that considers associated natural gas as unavoidably lost under the same circumstances as 9 out of 10 [North Dakota Industrial Commission] variance allowances. . . .'' The BLM acknowledges North Dakota's disagreement with the BLM's characterization of North Dakota's gas capture regulations. Nonetheless, as discussed in the proposed rule, the BLM found significant variance in the scope and stringency of State regulations. Flaring statistics show that State regulations, by themselves, have not been adequate to reduce waste from Federal oil wells, underscoring the need for uniformity with respect to Federal mineral interests. As discussed further in the section-by-section analysis below, according to EIA data from 2017 through 2022, North Dakota accounted for approximately 33 percent of the volume of gas flared nationwide but only 11 percent of the volume of oil produced nationwide. Wyoming accounted for approximately 11 percent of the average total flared gas onshore nationwide and 2 percent of the oil produced nationwide. State efforts to reduce venting and flaring, though important, do not displace the Secretary's duty to prevent undue waste from Federal and Indian wells nationwide.[112] Consequently, the BLM's

[107] 83 FR 49184, 49202 (Sept. 28, 2018).

[108] *California* v. *Bernhardt,* 472 F. Supp. 3d 573, 601–04 (N.D. Cal. 2020).

[109] Examples of variations among State regulations include the following. Unlike other States, (1) the States of New Mexico, North Dakota, Montana, Texas, Alaska, and Oklahoma do not have regulations to control losses of gas from pneumatic equipment; (2) Texas' requirements to inspect for and repair leaks are focused on storage tanks; (3) Alaska does not maintain LDAR requirements; and (4) Wyoming's requirements for tanks, pneumatic equipment, and LDAR are limited to the Upper Green River Basin ozone nonattainment area.

[110] These States are Wyoming, Utah, Montana, Texas, and Oklahoma.

[111] 87 FR 73588, 73598 (Nov. 30, 2022).

[112] *https://www.eia.gov/dnav/ng/ng_prod_sum_a_EPG0_VGV_mmcf_a.htm, https://www.eia.gov/dnav/pet/pet_crd_crpdn_adc_mbbl_a.htm.*

application of a uniform national standard ensures improved royalty collection and avoidance of waste. In addition, the Secretary, and not the States, is responsible for collecting Federal and Indian royalties. The Secretary can best do this by not requiring shifting Federal standards in response to any changes to State requirements.

The BLM also recognizes that the EPA has recently finalized regulations governing certain aspects of oil and gas production operations at 40 CFR part 60, subparts OOOOb and OOOOc, and that these regulations can have the incidental effect of reducing the waste of gas during production activities. Specifically, EPA's regulations [113] require: (1) capture or flaring of gas that reaches the surface during well completion operations with hydraulic fracturing; [114] (2) storage tanks with potential methane emissions of 20 tons or more per year to control those emissions (including through combustion); [115] (3) process controllers to be zero emissions; [116] (4) pumps to be zero emissions; [117] and (5) operators of well sites to develop and implement a fugitive emissions monitoring plan.[118]

Although operator compliance with those EPA requirements can reduce the waste of natural gas from Federal and Indian leases, they do not supplant the need for BLM standards that are adopted pursuant to the BLM's independent statutory authority and duties. The BLM further notes that, under the CAA, States with one or more existing sources must develop and submit State plans to the EPA for approval. Under this statutory structure, State plans would implement the emissions guidelines for existing sources. Also, EPA's requirements are not a substitute for BLM standards because EPA's requirements are focused on controlling GHG (in the form of methane) and VOC emissions, rather than conserving natural gas, and compliance with the EPA's standards will not always reduce the waste of natural gas or assure payment of royalties to the United States or to Indian mineral owners. For example, an operator can comply with EPA's requirements for storage tanks by routing the emissions to combustion (*i.e.,* flaring) and therefore eliminating venting from the tanks altogether. That process results in the same loss of gas as venting the gas from the tank. Therefore, while that process reduces air pollution by prioritizing flaring over venting, it does not reduce waste or assure payment of royalties because in either scenario, the same amount of gas is lost.

Based on its review and analysis of State and EPA regulations, the BLM finds that it is necessary to establish a uniform standard governing the wasteful losses of Federal and Indian gas through venting, flaring, and leaks.[119] The BLM cannot rely on a patchwork of State and EPA regulations to ensure that operators of Federal oil and gas leases consistently meet the waste prevention mandates of the MLA, that the American public receive a fair return for the development of the Federal mineral estate, and that the Department's trust responsibility to Indian mineral owners is satisfied. The BLM acknowledges that this is a change in position from what the BLM stated in the Revision Rule regarding analogous State and EPA regulations, a change shown to be necessary by the vast increase in flaring in recent decades, which demonstrates the ineffectiveness of NTL–4A in controlling the waste of gas through venting and flaring. In addition, establishing a uniform standard in lieu of case-by-case avoidable and unavoidable loss determinations reduces the administrative burden on the BLM's limited resources; avoids inconsistent application across the States; and simplifies Federal and Indian enforcement.

The RIA for this final rule calculates that this rule would cost operators $19.3 million per year, using a 7 percent discount rate, for the next 10 years ($19.2 million per year using a 3 percent discount rate), while generating benefits to operators of approximately $1.8 million per year, using a 7 percent discount rate, in the form of 0.45 Bcf of additional captured gas.[120] The RIA estimates that this final rule would generate $51 million per year in additional royalties. The BLM acknowledges that the estimated costs of this rule to operators will outweigh the benefits in terms of the estimated monetized market value of the gas conserved. However, these benefits do not take into account the increase in royalties that will be received by the American taxpayer or Indian mineral owners, or include any increase in production that could possibly be received from changes in behavior due to the avoidable loss threshold, which would also lead to an increase in benefits. The BLM notes that the statutory provisions authorizing the BLM to regulate oil and gas operations for the prevention of waste do not impose a net-benefit requirement.

Separately, the reduced methane emissions associated with the final rule provide a monetized benefit to society (in the form of avoided climate damages) of $17.9 million per year over the same time frame, leading to an overall net monetized benefit from the rule of $360,000 to $441,000 a year, as well as additional unquantified benefits. (See Appendix A of the RIA regarding unquantified benefits.) The basis for the BLM's estimates of social benefits from reduced methane emissions—namely, the social cost of greenhouse gases (SC–GHG)—is explained in detail in Appendix A of the RIA. To be clear, although the BLM is reporting its estimates of the social benefits of reduced methane emissions here and in the RIA, the purpose of that reporting is solely to provide the most complete and transparent accounting of the costs and benefits of the rule for the public's awareness. The BLM considered but did not rely on climate-related costs and

[113] 40 CFR part 60 subpart OOOOb regulates greenhouse gases (in the form of limitations on methane) and VOCs from various new, modified, and reconstructed emission sources across the Crude Oil and Natural Gas source category for which construction, reconstruction, or modification commenced after December 6, 2022. 40 CFR part 60 subpart OOOOc includes presumptive standards for greenhouse gases (in the form of limitations on methane, a designated pollutant), for certain existing emission sources prior to December 6, 2022, across the Crude Oil and Natural Gas source category.

[114] *See* 40 CFR part 60 subpart OOOOb at § 60.5375b.

[115] *See* 40 CFR part 60 subpart OOOOb at § 60.5395b and 40 CFR part 60 subpart OOOOc at § 60.5396c.

[116] *See* 40 CFR part 60 subpart OOOOb at § 60.5370b and 40 CFR part 60 subpart OOOOc at § 60.5362c(c), § 60.5370c and Table 1.

[117] *See* 40 CFR part 60 subpart OOOOb at § 60.5370b and 40 CFR part 60 subpart OOOOc at § 60.5362c(c), § 60.5370c and Table 1.

[118] *See* 40 CFR part 60 subpart OOOOb at § 60.5370b, and § 60.5397b and 40 CFR part 60 subpart OOOOc at § 60.5362c(c), § 60.5370c, Table 1, and § 60.5397c.

[119] The BLM acknowledges that the *Wyoming* court questioned what it described as the BLM's authority to ''hijack'' the cooperative federalism framework of the CAA ''under the guise of waste management.'' *Wyoming* 493 F. Supp. 3d at 1066. However, as noted elsewhere, this final rule is justified not by any ancillary effects on air quality or climate change, but solely on the basis of waste prevention—an arena where the BLM has independent statutory authority to regulate. *See Id.* at 1063 (''The terms of the MLA and FOGRMA make clear that Congress intended the Secretary, through the BLM, to exercise rulemaking authority to prevent the waste of Federal and Indian mineral resources and to ensure the proper payment of royalties to Federal, State, and Tribal governments.''). On its own terms, therefore, the *Wyoming* court's reference to cooperative federalism under the Clean Air Act is inapplicable to this final rule, which does not seek to improve air quality and does not rely on EPA's CAA regulations.

[120] The cost-benefit analysis contained in the RIA was generated to comply with Executive Order 12866 and is not required by the statutes authorizing the BLM to regulate for the prevention of waste from oil and gas leases.

benefits when reaching the policy decisions in this rule. The requirements of this final rule reflect reasonable measures to avoid waste, regardless of any impacts with respect to climate change.

IV. Discussion of Public Comments on the Proposed Rule

This section of the preamble summarizes the major categories of the public comments that the BLM received in response to the proposed rule, as well as the BLM's responses. Detailed discussion regarding the substantive comments on the proposed rule that the BLM received, the BLM's responses to those comments, and changes that the BLM made in the final rule are provided in Section V (Section-by-Section Discussion) of this preamble.

The public comment period for the proposed rule ended on January 30, 2023. During the 60-day public comment period, the BLM received 3,323 total comments submitted from Federal, State, local governments, local agencies, Tribal organizations, industry representatives, individuals, and other external stakeholders. Of the 3,323 comment letter submissions, 2,892 were template form letters from seven different organizations, leaving 134 additional unique commenters. From these 141 unique commenters, the BLM identified 1,123 unique comments on the proposed rule.

Several commenters requested that the BLM hold meetings to take public input on the proposed rule before the comment period ended. The BLM held additional meetings with the Santa Rosa Rancheria Tachi-Yokut Tribe on December 1, 2022; the Mandan, Hidatsa and Arikara Nation (MHA Nation) on December 6, 2022, and February 13, 2023; and the Southern Ute Indian Tribe on April 10, 2023, May 25, 2023, and June 8, 2023.

All relevant comments are posted at the Federal eRulemaking portal: *http://www.regulations.gov.* To access the comments at that website, enter 1004–AE79 in the Searchbox.

Comments on Federalism Implications

Summary of Comments: Several commenters suggested that the BLM withdraw the proposed rule on the grounds that it exceeds Federal statutory authority or, in the alternative, revise the proposed rule to reflect a federalism framework to affirm the States' authority over State and local mineral resources within the State's boundaries. To that end, the commenters stated that the final rule has sufficient federalism implications to warrant the preparation of a federalism summary impact statement. In support of this position, the commenters claimed that this rule unlawfully focuses on air quality emissions rather than waste, and that this focus violates the cooperative federalism framework under the CAA. The commenters referenced the BLM's purported preference for flaring over venting and claimed that this preference for flaring is unsupported because the BLM's regulatory authority is limited to waste prevention and does not include safety as a guise to regulate air quality.

Response: The BLM disagrees with the commenters. The BLM developed this rule based on its statutory authority to prevent and reduce the waste of natural gas produced from Federal and Indian (not State) land through improved regulatory requirements pertaining to venting, flaring, and leaks, while ensuring a fair return to the American public.[121] It does not override the States' or Tribes' more stringent requirements for flaring and gas capture or waste prevention measures on State or Indian lands. Operators with leases on Federal lands must comply with the Department's regulations and with State requirements to the extent that they do not conflict with the Department's regulations. As stated in the Federalism section of this rule, below, although the final rule will affect the relationship between operators, lessees, and the BLM, it will not directly impact States. Accordingly, a federalism summary impact statement is not warranted.

Any claim that this rule violates the cooperative federalism framework under the CAA is likewise unfounded. As discussed below, the waste prevention rule is intended to prevent the waste of gas from Federal oil and gas leases and is, therefore, not an air quality emissions rule. As noted in the preamble to the proposed rule, the *Wyoming* court questioned the BLM's authority to—in the court's view—preempt cooperative federalism under the CAA, using a pretext of waste prevention. But as consistently explained throughout this preamble, this final rule is authorized by the BLM's independent statutory authority to prevent waste of natural gas and is not focused on achieving any ancillary effects on air quality or climate change. As such, cooperative federalism requirements under the CAA do not apply to this final rule.[122] Moreover, the Department's regulations governing oil and gas operations on the public lands have long required operators to conduct operations in a manner that is protective of natural resources, environmental quality, and public health and safety. *See* 43 CFR 3162.5–1 and 3162.5–3. As the BLM stated in the proposed rule and reiterated in the § 3179.50 Safety discussion in this final preamble, combusting gas rather than venting it into the surrounding air is safer *for operations* due to the gas' explosiveness and the risk to workers from hypoxia and exposure to various associated pollutants.

Comments on State or Tribal Variances

Summary of Comments: At least one commenter said that, as a sovereign regulatory authority over the State and private minerals located within the State's boundaries, it objected to the requirement that the State and private mineral holders must seek variances from the waste prevention requirements. This commenter also concluded that the variance provision was improper because, according to the commenter, the rule is an air quality emissions rule.

Response: The BLM decided not to include the provisions for State or Tribal requests for variances that were found in the proposed rule at 43 CFR 3179.401 in part because it concluded that the proposed variance provision could lead to regulatory uncertainty. As stated above in response to comments regarding federalism implications, the final rule does not preempt more stringent requirements for flaring, gas capture, or waste prevention under State or Tribal law, as appropriate. Operators with oil and gas leases on Federal lands must comply with the Department's regulations and with State requirements, to the extent that they do not conflict with the Department's regulations, and similarly operators of Tribal leases must comply with both Tribal and Departmental regulations. Moreover, the waste prevention rule is intended to prevent the waste of gas from Federal and Indian oil and gas leases and is, therefore, not an air quality emissions rule, as further discussed below.

Comments on Air Quality

Summary of Comments: Some commenters claimed that this rule seeks to address air quality rather than waste prevention and that the BLM should defer to the Environmental Protection Agency (EPA) or State agencies to regulate air quality under the CAA and other authorities.

Response: The BLM disagrees. As discussed above, the rule responds to the BLM's statutory obligation to prevent waste. The MLA requires the BLM to subject all oil and gas leases to the condition that the lessee ''use all

[121] 30 U.S.C. 187.

[122] We have found no statutory support for the argument that any regulation that has ancillary effects on air quality is per se preempted by the CAA.

reasonable precautions to prevent the waste of oil or gas developed in the land'' and underscores that ''[v]iolations of the provisions of this section shall constitute grounds for the forfeiture of the lease.'' [123] The Act also provides the Secretary with authority to subject leases to ''such rules . . . for the prevention of undue waste as may be prescribed by [the] Secretary.'' [124] Even the *Wyoming* court—which vacated portions of the 2016 Rule after the court found it was primarily justified by air quality benefits—recognized that the BLM does in fact have authority to promulgate and impose rules designed to reduce waste, provided such rules are ''independently justified as waste prevention measures pursuant to [the BLM's] MLA authority.'' 493 F. Supp. 3d at 1067. As explained below, the waste prevention provisions of the final rule are independently justified, and the air quality comments from oil-and-gas industry representatives do not demonstrate otherwise.

Notwithstanding this authority, a commenter opposed to much of the proposed rule stated that the BLM should avoid conflict or duplication with EPA's and the States' exercise of their ''exclusive authority'' over air quality. The commenter added that CAA regulation and enforcement fall within other Federal and State agencies' ''exclusive jurisdiction.'' The commenter also referred to what it described as the ''exclusive air quality purview'' of EPA and the States, while arguing that the BLM should not ''assume'' such authority.

The BLM is not regulating air quality in this rule. The BLM is regulating to prevent waste and to assure payment of royalties pursuant to independent and express statutory authority. The ability of EPA and the States to regulate air pollution does not bar the BLM from fulfilling its statutory obligation to regulate waste. Addressing waste may have some effects on air pollution and its connection to human health and welfare, which is the primary responsibility of the EPA, States, and local governments.[125] But the possibility that a BLM rule might have incidental effects on air quality does not strip the BLM from exercising its clear, express statutory authority under the MLA to prevent or reduce waste of gas. *Cf. Wyoming,* 493 F. Supp. 3d at 1063 (acknowledging that ''a regulation that prevents wasteful losses of natural gas from venting and flaring necessarily reduces emissions of that gas''). The MLA is designed to encourage diligent development of Federal oil and gas resources, avoid waste, and generate revenue, *see* Public Law 66–145, sections 15, 16, 26, 27, while the CAA seeks to reduce air pollution to protect the public health and welfare. 42 U.S.C. 7401(a)(2), (b)(1). The EPA's regulation of methane emissions does not excuse the BLM from its obligation to prevent waste of and generate revenue from Federal oil and gas resources. In the proposed and final rules, the BLM has explained why it is implementing certain measures for waste prevention or other matters attendant to BLM authority (*e.g.,* safety and royalty measurement).

Another comment expressed concern about conflicts between the MLA and various air quality regulations and statutes. The commenter specified that the rule should not ''create potential conflicts or duplication with EPA and State requirements promulgated pursuant to the CAA and State authorities.'' Another comment expressed concern about a ''potentially conflicting and duplicative BLM regulatory overlay'' on existing and forthcoming regulations on methane and VOC emissions. As noted, the CAA and the MLA pursue different statutory goals, which may, as a general matter, reduce the possibility of conflict among specific regulations promulgated by the BLM and EPA. The successful prevention of the waste of gas may also lead to air quality effects. Nonetheless, we have examined the EPA's methane-related regulations and the EPA's OOOO series rules [126] and have avoided conflict by focusing on the BLM's waste prevention and royalty measurement mandates, while acknowledging ancillary effects to air quality from this final rule. We have found no provision of the final rule that prevents compliance with EPA's regulations.

Enactment of the CAA did not repeal any section of the MLA or any of the BLM's other statutory authorities. Thus, neither the CAA, nor the programs of the EPA, States, or Tribes relieve the BLM of its statutory obligations to prevent waste and to assure royalty accountability. Similarly, nothing in this final rule interferes with any air quality regulation of EPA, the States, or Tribes.

In sum, we conclude that the final rule is a proper exercise of the agency's authority under the MLA and other statutes (discussed above) to promulgate regulations for the prevention of waste. Its ancillary effects on air quality are not disqualifying and, despite commenters' suggestions to the contrary, do not defeat the provisions of the MLA discussed above, as reinforced by the IRA.

Commenters also suggested that the BLM's proposed rule implicates a ''major question'' as that term is used in *West Virginia* v. *EPA,* 142 S. Ct. 2587 (2022). In that case, the Supreme Court vacated an EPA rulemaking because, according to the Court, EPA ''claimed to discover in a long-extant statute an unheralded power representing a transformative expansion in its regulatory authority,'' ''located that newfound power in the vague language of an ancillary provision of the Act,'' and ''adopted a regulatory program that Congress had conspicuously and repeatedly declined to enact itself.'' *Id.* At 2610. The Supreme Court went on to hold that, in such circumstances, colorable congressional authorization was insufficient; the agency must instead point to ''clear congressional authorization'' for its actions. *Id.* At 2614.

The final rule is not the type of ''extraordinary'' Rule that implicates a major question. *See Id.* At 2609. The BLM has not claimed to discover any novel authority in the MLA. Rather, a lessor's legal capacity to prevent waste extends back at least to the common law prudent operator standard. Congress codified the Secretary's authority and obligation to prevent waste in 1920, when it drafted the MLA to provide that ''[e]ach lease shall contain . . . a provision that such rules . . . for the prevention of undue waste as may be prescribed by said Secretary shall be observed.'' [127] Congress affirmed the BLM's authority and obligations in 2022, when, in the IRA, it required the BLM to charge royalties on gas that was not ''unavoidably lost'' but did not otherwise define that term.[128] By the same token, the MLA provisions at issue here are not ''ancillary:'' they have been squarely and explicitly relied upon for decades in efforts to reduce waste. In short, the Department's authority to regulate waste is—and always has been—a component of its authority to lease.

Beyond this longstanding authority, the BLM's rule is narrower than the

[123] 30 U.S.C. 225.

[124] 30 U.S.C. 187.

[125] *Bell* v. *Cheswick Generating Station,* 734 F.3d 188, 190 (3d Cir. 2013) (emphasis added).

[126] 77 FR 49490, 49542 (Aug. 16, 2012); 81 FR 35824, 35898 (June 3, 2016); 86 FR 63110 (Nov. 15, 2021).

[127] See 30 U.S.C. 187).

[128] As previously stated in the preamble, the IRA provides that, for leases issued after August 16, 2022, royalties are owed on all gas produced from Federal land, subject to certain exceptions for gas that is lost during emergency situations, used for the benefit of lease operations, or ''unavoidably lost.''

Supreme Court's characterization of the rule in *West Virginia.* That rule, according to the Court, ''balance[ed] the many vital considerations of national policy implicated in deciding how Americans will get their energy.'' 142 S. Ct. at 2612. *Accord Biden* v. *Nebraska,* 143 S. Ct. 2355, 2372 (2023) (striking down student loan forgiveness program on the grounds that ''no regulation premised on [the ostensibly authorizing statute] has even begun to approach the size or scope of the Secretary's program''). Here, the BLM is changing its regulations to marginally adjust waste prevention—merely one component of oil and gas production—under the MLA and the Indian minerals statutes. Those statutes, in turn, reflect merely one component of the nation's total oil and gas production, which itself is merely one component of the nation's total energy mix.

Nor has Congress considered and rejected the measures in this final rule. Commenters did not provide evidence showing that the most significant portions of this rule—new requirements for APDs, clarification of the term ''avoidably lost'', and leak detection—have been the subject of congressional debate. Ultimately, ''common sense'' indicates that the MLA and the IRA reflect precisely ''the manner in which Congress [would have been] likely to delegate'' the technical and discrete issue of waste prevention vis-à-vis public minerals. *West Virginia* at 2609. The BLM therefore did not make changes based on these comments.

Comments on Ways To Minimize Waste of Natural Gas During the Leasing Stage

Summary of Comments: The BLM requested public comment on how it can improve its processes pertaining to the leasing stage of development to minimize the waste of natural gas during later stages of development. Some commenters recommended that the BLM require WMPs at the land use planning stage or when an operator nominates parcels of land for leasing under an Expression of Interest. Although at least one commenter recommended that the BLM require a WMP during the leasing stage, at least one other commenter objected to that proposal. At least one commenter objected to the BLM's proposed requirement that an APD include a WMP and specifically protested what it claimed to be vague standards for approval or denial of the plan. The commenter further stated that this proposed provision potentially duplicates a State's gas capture plans and may delay or cause the State permit to expire if the rule required the operator to submit information that conflicts with the State's requirements. Another commenter requested that the BLM remove any requirement for the operator to provide confidential business information or otherwise unavailable information in the WMP because the operator does not possess this information and it is not helpful for the specific purpose it is intended.

Response: As discussed further in the Section-by-Section discussion, the BLM in this final rule has retained the requirement to submit a WMP with a Federal or Indian oil and gas APD, or, in the alternative, submit a self-certification statement that would commit the operator to capturing 100 percent of the associated gas produced from an oil well and would obligate the operator to pay royalties on all lost gas except for gas lost through emergencies. The BLM has reviewed the comments and changed the provisions for a WMP. Under the final rule, the operator may submit either: (1) a self-certification statement committing the operator to capture 100 percent of the associated gas less any on-lease use of associated gas pursuant to subpart 3178; or (2) a WMP that includes, among other requirements, a certification that the operator has a valid, executed gas sales contract for the associated gas. A WMP is subject to the avoidable loss flaring limit established in final § 3179.70, while self-certification is a statement that the operator will be able to capture, as defined in final § 3179.10, 100 percent of the associated gas. In the case of self-certification, 100 percent of the oil-well flared gas has a royalty obligation from the date of first production until the well is plugged and abandoned, less any on-lease use of associated gas pursuant to subpart 3178.

The BLM has added the self-certification option to the final rule in response to comments that the waste prevention plan requirement is overly burdensome for industry and provides little benefit to the BLM. The self-certification option serves the dual purposes of providing operators with a less burdensome alternative, while simultaneously reducing waste through the encouragement of capture, a term defined in the proposed rule and unchanged in the final rule. The updated requirement provides the operator with the flexibility to secure a valid, executed gas sales contract or elect to expedite approval of the APD with a self-certification statement. In making this decision, operators may consider, *e.g.,* the time to secure a gas sales contract, the desired date of the oil well completion, or the flaring royalty obligation associated with either a WMP or self-certification.

The BLM disagrees with a commenter's belief that the WMP potentially duplicates a State's gas capture plans or would delay or cause a State permit to expire if the rule requires the operator to provide confidential or otherwise unavailable information. In any State or on any Tribal lands with essentially the same requirements as this final rule, this rule has no additional substantive burden on operators. As previously stated, the final rule does not preempt any State's or Tribe's requirements that are more stringent with respect to flaring and gas capture requirements or for waste prevention. There is nothing unique about this rule's interaction with State or Tribal law; those laws have always applied to operations regulated by the BLM, except on the rare occasion in which they prevent compliance with BLM regulations. More stringent State or Tribal regulations apply of their own force. Operators with leases on Federal lands must comply with both the Department's regulations and with State or Tribal requirements, to the extent that the non-Federal requirements do not conflict with the Department's regulations. None of the commenters have shown that any portion of the rule would interfere with the States' or Tribes' ability to regulate oil and gas operations on Federal lands or that the operator cannot comply with both the final rule and State or Tribal regulations.

After carefully considering the comments received concerning confidential information that may be included in the WMP, as well as information that is not within the operator's purview, the BLM has revised the required information in the WMP to align with the BLM's waste prevention objectives more closely. For example, the BLM is not finalizing the proposal for operators to identify in the WMP the anticipated daily capacity of the pipeline at the anticipated date of first gas sales from the proposed well, or the proposal to include any plans known to the operator for expansion of pipeline capacity for the area that includes the proposed well. Commenters indicated that this information could be confidential and proprietary information that belongs to midstream companies and that oil and gas operator are obligated to keep confidential. We agree.

Comments on Definition of ''Unreasonable and Undue Waste of Gas'' in the Loss of Oil or Gas, Avoidable or Unavoidable Determination, and the Prudent Operator Standard

''Unreasonable and undue waste of gas,'' avoidable or unavoidable determination, and the prudent operator standard are interrelated and warrant a combined discussion. Accordingly, the following summary of comments and the BLM's response will cover these three concepts.

Summary of Comments: In the proposed rule, the BLM requested public comment on the definition of ''unreasonable and undue waste of gas,'' which the BLM considers when determining whether the loss of oil or gas is avoidable or unavoidable. Commenters suggested that the definition include an express reference to economic feasibility because, according to the commenters, the rule will become unwieldy and difficult for the BLM to administer without this economic consideration. Commenters expressed concern that the proposed avoidable loss threshold ignores whether the lessee is acting reasonably and prudently without any evaluation of the operator's actual economic circumstances, and that flaring is not automatically ''waste.''

Response: We disagree with the commenters' suggestion that the rule should accommodate economic feasibility for individual flaring cases. In the proposed rule, the BLM explained that ''lessees have an obligation of reasonable diligence in the development of the leased resources, rooted in due regard for the interests of both the lessee and the lessor.'' 87 FR 73597. The lessor has an interest in collecting royalties on production and in conserving gas for future disposition. The proposed rule also explained that the prudent operator standard looks to the operation of a lease as a whole and considers the interests of both the lessees and the lessors in conserving and developing the Federal mineral resource. However, with the final rule, the BLM has decided to not carry forward the proposed definition of ''unreasonable and undue waste of gas'' and removed the term from § 3179.10 and references to the definition in §§ 3179.100 and 3179.70(b). The BLM has determined that the definition might create unnecessary confusion and is not relevant for purpose of carrying out §§ 3179.100 and 3179.70(b).

Several commenters objected to the BLM's discussion of the prudent operator standard, which focuses on the lease as a whole, and argued that the prudent operator standard forecloses the BLM from imposing measures for waste prevention that may, in some situations, require an operator to spend more than the value of potentially wasted gas. That is, the commenters did not contend that the BLM's rule would render leases unprofitable on the whole, but merely that the prevention of marginal waste might not, from the individual operator's perspective (and particularly for low volume producers) pay for itself.

In support of this reading, the commenters cited the BLM's regulatory definition of waste as:

> any act or failure to act by the operator that is not sanctioned by the authorized officer as *necessary* for proper development and production and which results in: (1) A reduction in the quantity or quality of oil and gas ultimately producible from a reservoir under prudent and proper operations; or (2) avoidable surface loss of oil or gas.

43 CFR 3160.0–5 (emphasis added). The definitions in 43 CFR 3160.0–5 explicitly apply to part 3160 only, and the BLM notes that most of the regulations in this final rule appear in part 3170. In any event, there is no conceptual inconsistency between the regulations in that part and the definitions in part 3160. The definition of ''waste'' in part 3160 indicates that gas is wasted where, *inter alia,* loss is avoidable, and the final definitions in part 3170 explain when loss is avoidable and, separately, what subset of ''waste'' is ''undue.'' To avoid confusion, the final rule has deleted the word ''prudent'' where it had occurred in the proposed rule. See § 3179.41(a) and (b).

It is unclear precisely why commenters believe this provision is inconsistent with a fair reading of the non-statutory prudent operator standard and why they believe that standard requires a narrower reading. It is true, as commenters note (and as discussed elsewhere in this rule), that NTL–4A and IBLA caselaw have previously recognized ''unavoidably lost'' gas—the waste implicitly contemplated by 43 CFR 3160.0–5(1)—as excluding those cases where, in a case-by-case determination, ''the Supervisor determines that said loss resulted from . . . the failure of the lessee or operator to take all reasonable measures to prevent and/or control the loss.'' NTL–4A. II.A. For the reasons explained elsewhere in this preamble, such case-by-case determinations are no longer sufficient for the BLM's fulfillment of its obligations to prevent waste. Here, we explain why the authorities cited by some commentors do not *require* individualized determinations.

Thus, for example, commenters' frequent citations to court decisions and to the IBLA decisions in *Ladd Petroleum Corporation* and *Rife Oil Properties* are misplaced. *Ladd* did not address the meaning of the prudent operator standard or avoidably lost gas at all, and instead held that, where the BLM had *chosen* to issue certain guidance detailing case-by-case feasibility determinations, the substance of that guidance should govern in pending administrative appeals. 107 IBLA 5 (1989). *Rife Oil,* meanwhile, stands for the proposition that NTL–4A provided for case-by-case waste determinations, not that the MLA and FOGRMA require such determinations. 131 IBLA 357, 373–75 (1994).[129] The same is true for the cases cited by *Ladd* and *Rife Oil. See Lomax Exploration Co.,* 105 IBLA 1 (1988) (concluding that NTL–4A applied to certain venting or flaring without passing on the BLM's discretion to modify or depart from NTLA–4A); *Mallon Oil Co.,* 107 IBLA 150, 156 (1989) (same); *Maxus Exploration Co.,* 122 IBLA 190, 198 n.1 (1992) (''As the word 'economic' is used *in NTL–4A,* it relates to a lessee's argument that conservation of the gas is not viable from an economic standpoint . . . .'') (emphasis added).

Some commenters also concluded that the IRA essentially codified NTL–4A's definitions of ''avoidable'' and ''unavoidable,'' reasoning that Congress must have been aware of the BLM's pre-2016 definitions of those terms. The IRA, however, did not provide a statutory definition of ''avoidable'' or ''unavoidable,'' and did not prohibit the Secretary of the Interior from promulgating a rule to define and implement those terms under her existing statutory authorities. *See, e.g.,* 30 U.S.C. 189.[130] The IRA did not amend the MLA to require the type of case-by-case evaluations the commenters seek, and commenters have

[129] In dicta, the *Rife Oil* decision considered a possible ''read[ing] [of] NTL–4A as barring the venting of gas . . . without regard to whether it was avoidably lost'' within the meaning if NTL–4A, 131 IBLA at 374, hypothesizing that such a reading ''would lead to potential waste of oil where production of oil was marginally economic but production of gas was not economic *and the requirement to market the gas caused a premature abandonment of the well.*'' *Id.* at 374 n.6 (emphasis added). This abstract hypothetical says nothing regarding the United States' general authority as lessor to balance by regulation the waste from potential loss of gas against the waste from potential loss of oil, much less does it evaluate the specific balancing the BLM has performed throughout in this rule.

[130] ''The Secretary of the Interior is authorized to prescribe necessary and proper rules and regulations and to do any and all things necessary to carry out and accomplish the purposes of [the MLA].''

not provided ''the sort of overwhelming evidence of [congressional] acquiescence'' to NTL–4A's definitions ''necessary to support [their] argument in the face of Congress's failure to amend.'' *Sackett* v. *EPA,* 143 S. Ct. 1322, 1343 (2023).[131]

Commenters also cited FOGRMA's provision that lessees are liable for royalties when ''waste is due to negligence . . . or . . . failure to comply with *any rule or regulation* . . . under any mineral leasing law.'' 30 U.S.C. 1756 (emphasis added). This provision says nothing of the prudent operator standard and imposes royalty for failure to comply with any applicable regulations, including the regulations at issue in this rule. Some commenters attempted to downplay this language by characterizing FOGRMA as requiring compliance only with ''specific regulatory requirement[s],'' but the relevant statute does not include the word ''specific,'' and the commenters provided no explanation as to how that concept, even if somehow embodied in FOGRMA, would operate to exclude from royalty obligations those regulations—like this final rule—designed to conserve the Federal and Indian mineral estates.

Commenters also cited to the District of Wyoming's decision addressing the merits of the 2016 Rule, but that decision likewise does not compel the commenters' preferred reading of the prudent operator standard or elevate it to a statutory limit on the Secretary's rulemaking authority. The relevant portion of the decision began by reciting the history of the BLM's case-by-case evaluation of feasibility, citing *Rife Oil* and the IBLA's *Ladd Petroleum* decision. See *Wyoming,* 493 F. Supp. 3d at 1073–74.[132] The *Wyoming* court then concluded that although the ''MLA's waste provisions leave room for interpretation,'' the BLM's 2016 construction of those provisions was unlawful because the BLM had ''primarily'' sought to ''benefit the environment and improve air quality,'' as reflected in the BLM's reliance on the 2016 Rule's ancillary effects. *Id.*

In both its proposed and final rules, however, the BLM is exclusively focused on addressing waste and royalty payments, along with certain safety provisions, and has disavowed in form and substance any effort to regulate air quality in a manner entrusted to EPA and that agency's State and Tribal partners, including by eschewing any reliance on ancillary effects on the atmosphere. Instead, the BLM has promulgated this rule purely to curb the excessive, accelerating, and nationwide waste of Federal and Indian gas and to curb localized hazards to human health and safety from operations. As it did in the 2016 Rule, the BLM has acknowledged its ''decades-long practice of factoring in operator economics on a case-by-case basis when determining whether a loss was avoidable,'' explaining in this rulemaking why the MLA's waste provisions—which ''leave room for interpretation''—now justify a suite of nationwide standards and important flexibilities for specific operators and leases. *Id.* Therefore, the final rule does not conflict with the Wyoming court's decision.

In dicta, the *Wyoming* court also discussed the prudent operator standard without reference to considerations like the social cost of methane. *Id.* The District Court cited caselaw and the MLA for the general proposition that ''[o]il and gas leases—including those between the Federal Government and its lessees—are intended to ensure mutually profitable development of the lease's mineral resources.'' *Id.* (emphasis added). Indeed, the cases cited by the *Wyoming* court stand for the proposition that a mineral lease is fundamentally different from ''a business into which [the lessee] puts property, money, and labor exclusively his own, the profits and losses in which are of concern only to him, and the conduct of which may be according to his own judgment . . . .'' *Brewster* v. *Lanyon Zinc Co.,* 140 F. 801, 814 (8th Cir. 1905). Instead, the ''interest in the subject of the lease . . . make the extent to which . . . the operations are prosecuted of immediate concern to the lessor.'' *Id.* As the BLM noted in the proposed rule and reaffirms here, these general propositions do not specify precisely *how* the United States, as manager of the Federal mineral estate, must perform its statutory duty of preventing waste, and, specifically, whether it must do so on a case-by-case basis or elevate an operator's profit maximization over the United States' duties to the taxpayers and to Indian mineral owners.

As discussed in *Brewster,* one way the lessor may elect to enforce this interest is by seeking *expedited* production, so that the lessee's failure to develop the lease does not ''exhaust'' the oil and gas ''through the operation of wells on adjoining lands.'' *Id. See also Gerson* v. *Anderson-Prichard Prod. Corp.,* 149 F.2d 444, 446 10th Cir. 1945 (''A lease of this kind contains an implied covenant that the lessee will exercise reasonable diligence in the development of the leasehold and *in the protection of it from undue drainage through wells on adjacent lands*.'') (emphasis added). The prudent operator standard chiefly applies to these drainage cases, in which it protects the operator from overbroad allegations of a ''breach of the covenant for the exercise of reasonable *diligence*.'' *Brewster,* 140 F. at 814–15 (emphasis added). Given the significant cost of drilling a new well[133] ''and the fact that the lessee must bear the loss if the operations are not successful,'' the standard shields the lessee from demands to drill unprofitable wells ''even if some benefit to the lessor will result'' from less drainage. *Brewster,* 140 F. at 814 (emphasis added). *See also Olsen* v. *Sinclair Oil & Gas Co.,* 212 F. Supp. 332, 333 (D. Wyo. 1963) (''the 'prudent operator' rule . . . is to the effect that the lessee has no implied duty to drill an offset well if reasonably prudent operators would not drill it'').

In other words, the prudent operator standard originally arose in and chiefly applies to drainage, but the principles underlying the standard equally enable the lessor to exercise its ''immediate concern'' in the lease by requiring conservation of the mineral estate. *Brewster* at 814. The policy concerns ordinarily animating application of the prudent operator standard are not as salient in the latter case, where there is materially less risk that the lessor will seek to reap a profit by asking the lessee to shoulder a significant net loss. A lessor requiring the lessee to conserve marginally more resources generally does not, for example, seek royalties from significant capital expenses, borne by the lessee, ''incident to the work of exploration,'' *Id.,* or to ''drill[ing] an

[131] In the context of drainage (the original problem addressed by the prudent operator standard) the BLM has promulgated regulations detailing a lessee's obligations to avoid uncompensated drainage or to pay compensatory royalties. 43 CFR 3162.2–2 to 3162.2–15. Thus, as in this final rule, the BLM by regulation specifies the duties of lessees without reliance upon common law standards, including the prudent operator standard.

[132] In the Wyoming decision, the court characterized the IBLA's *Ladd* holding as ''remanding BLM decision that flared gas was avoidably lost for determination of 'whether in fact it was economically feasible to market the gas' and explaining that interpretation of NTL–4A giving operator opportunity to show gas was not marketable 'is consistent with the intent of the underlying statutory and regulatory authority.' '' This statement is a quote from a headnote in IBLA's decision, not the decision itself. *Ladd Petroleum Corp.,* 107 IBLA 5 (1989).

[133] According to a 2016 report by the Energy Information Agency: ''Total capital costs per well in the onshore regions considered in the study [ranged] from $4.9 million to $8.3 million, including average completion costs that generally fell in the range of $ 2.9 million to $ 5.6 million per well. However, there is considerable cost variability between individual wells.'' Trends in U.S. Oil and Natural Gas Upstream Costs, p.2 (U.S. E.I.A. March 2016).

offset well.'' *Gerson,* 149 F.2d at 446.[134] Congress essentially codified that understanding in the MLA, commanding the Secretary of the Interior to ''obtain for the public a reasonable financial return on assets that 'belong' to the public,'' while requiring only ''some incentive'' for development. *Cal. Co.* v. *Udall,* F.2d 384, 388 (D.C. Cir. 1961).

In all events—and contrary to the commenters' arguments in support of individualized economic analyses—any application of the prudent operator standard considers the profitability of the entire lease, not whether individual volumes of potentially wasted gas are themselves profitable for the lessee. *See Gerson,* 149 F.2d at 446 (''the lessee does not bear an implied obligation . . . unless, taking into consideration all existing facts and circumstances, it would probably produce oil in sufficient quantity to repay the whole sum required to be expended, including the cost of drilling, equipping, and operating the well, and also pay a reasonable profit on the entire outlay''). For the reasons discussed in this preamble, the BLM has reached reasonable determinations, with respect to each of its waste prevention measures, that the marginal restrictions in the final rule will not render a lease unprofitable.

On this score, some commenters argued that the draft RIA shows that the costs of the proposed rule exceed the benefits, and therefore the rule is arbitrary and capricious and/or is in tension with the prudent operator standard. The BLM disagrees. The RIA for the final rule provides estimates of the monetized costs and benefits under the accounting rules in OMB Circular A–4, p.38 (2003), and acknowledges that not all costs and benefits can be monetized. Comparison of monetized benefits to monetized costs provides useful but not complete analysis, and thus is not determinative with respect to the non-statutory prudent operator standard. The final rule requires operators to incur some expenses from which they may derive revenue (selling the gas), or may not gain revenue (paying royalties on flared gas or curtailing oil production to limit flaring). For example, the RIA treats royalties as ''transfer payments.'' Transfer payments do not increase or decrease the wealth of society as a whole, and thus are not counted as benefits of the final rule under the OMB Circular. For the Federal taxpayers and Indian mineral owners, though, royalty payments are income, and as such are benefits to which they are entitled under statute, regulations, and the terms of leases. We also note that some industry commenters point out that some of the costs of the proposed rule projected in the draft RIA are for tasks that are already required by the EPA in New Source Performance Standards subpart OOOOa. The BLM acknowledges that some projected costs are for tasks now required in the final EPA New Source Performance Standards subparts OOOOa, OOOOb, and OOOOc rules, as addressed in the RIA.

Comments on Banning Routine Flaring and Requiring Gas Capture

Summary of Comments: Some commenters requested that the BLM's final rule include a prohibition on ''routine flaring'' and that the final rule should ''require capture of flared gas where it is both technologically and economically feasible.'' The commenters also assert that the BLM is ''legally required to reduce waste, not just charge royalties on it.'' They note that reducing the waste of avoidably lost gas through capture requirements will also benefit ''individual taxpayers and Tribes and will have the added co-benefits of protecting frontline communities and the climate from the effects of wasted gas.'' Some commenters specifically noted the impacts of oil and gas operations and venting and flaring on environmental justice communities and asserted that charging royalties on flaring of associated gas and requiring WMPs will not significantly reduce venting and flaring without a prohibition on routine flaring.

Response: The BLM disagrees with those commenters in part. The MLA does not mandate capture of all gas as such or place a ban on venting or flaring as such, but instead requires operators to ''use *all reasonable diligence* to prevent the waste of oil or gas developed in the land.'' [135] As commenters note, the MLA also requires that all leases include ''a provision that such rules for . . . the prevention of *undue* waste as may be prescribed by said Secretary shall be observed.'' [136] Those statutory provisions accommodate instances where waste is not preventable, even when operators employ all reasonable diligence. Likewise, section 50263 of the IRA does not mandate capture of gas or place a ban on venting or flaring as such, but instead requires, subject to exceptions, the payment of royalties on gas that is consumed or lost by venting, flaring, or negligent releases through any equipment during upstream operations.[137] In short, Congress could have banned venting and flaring as such in the MLA or IRA, but did not.

The final rule implements the requirement in section 50263 of the IRA to assess royalties on gas that is lost by venting and flaring. Although the BLM believes that the royalty obligation for flared gas provides some marginal incentive for operators to make investments to sell the gas rather than to pay royalties on flared gas, we agree with the commenters that the statutory requirement for operators to use all reasonable diligence to prevent waste is a separate though related mandate—one that the final rule achieves through such requirements as a WMP.

Some commenters assert that to meet the MLA's requirements, the BLM must: (1) adopt a definition of ''unreasonable and undue waste'' that clarifies that routine flaring constitutes avoidable loss; (2) ban routine flaring, as some States have done; and (3) include only narrow exceptions where there is no alternative to venting or flaring. The BLM agrees that much of the historical flaring was avoidable, and as discussed below, the final rule includes provisions that impose limits on what would otherwise be ''routine flaring,'' including the definition of ''unavoidably lost'' in § 3179.41(b). We disagree, though, that the MLA requires that all routine flaring be defined as ''avoidable'' loss. The MLA requires operators to use ''reasonable diligence'' to avoid waste, and thus ''reasonable diligence'' to prevent undue waste; the statute does not prohibit all venting and flaring. Contrary at least one commenter's views, therefore, the final rule is not based on maximizing operators' internal profit—that is not the

[134] *Accord* Parker A. Lee, Ming Lei, Dominique J. Torsiello, ''*Reasonably Prudent Operator or Good and Workmanlike Manner: Does Your Contract Have the Right Standard of Care?*'' McDermott Will & Emery, *The National Law Review,* XIII, Number 27 (''Under the reasonably prudent operator standard, *the lessee or operator* is obligated to make reasonable efforts to develop the interest for the common advantage of both the lessor and lessee.'') (emphasis added).

[135] 30 U.S.C. 225 (emphasis added).

[136] 30 U.S.C. 187 (emphasis added).

[137] (a) IN GENERAL.—For all leases issued after the date of enactment of this Act, except as provided in subsection (b), royalties paid for gas produced from Federal land and on the outer Continental Shelf shall be assessed on all gas produced, including all gas that is consumed or lost by venting, flaring, or negligent releases through any equipment during upstream operations.

(b) EXCEPTION.—Subsection (a) shall not apply with respect to—(1) gas vented or flared for not longer than 48 hours in an emergency situation that poses a danger to human health, safety, or the environment; (2) gas used or consumed within the area of the lease, unit, or communitized area for the benefit of the lease, unit, or communitized area; or (3) gas that is unavoidably lost. 30 U.S.C. 1727.

test for ''reasonable diligence,'' and the final rule may require some operators to incur some costs of compliance. Other operators may design and operate their facilities to capture and sell virtually all oil-well gas at a profit, but that is merely sufficient—not necessary—for compliance with the relevant portions of the rule. Although the MLA does not authorize the BLM to prohibit all flaring, State laws or regulations prohibiting routine flaring apply to operations on Federal lands.

Some commenters argue that FLPMA requires the BLM to protect the quality of the air and atmospheric resources, citing 43 U.S.C. 1701(a)(8). Section 1701(a)(8) states it is the ''policy of the United States'' that ''the public lands be managed in a manner that will protect the quality of [various ecologic values, including] air and atmospheric'' values. That statement, however, is ''effective only as specific statutory authority for [its] implementation is enacted by [FLPMA] or by subsequent legislation and shall then be construed as supplemental to and not in derogation of the purposes for which public lands are administered under other provisions of law.'' [138] Here, the BLM's authority for its waste prevention and safety measures is established in the MLA, FOGRMA, and the IRA. The purposes of the final rule are waste prevention and royalty accountability, not air quality control. The BLM also addresses impacts on air quality in the EA for the final rule, as required by statute.

Commenters cited evidence that continued fossil fuel production is inconsistent with meeting goals of limiting climate change and that communities living near oil and gas operations suffer disproportionately high rates of adverse health effects. Those include several environmental justice communities near oil and gas operations on the public lands. Those issues are discussed in the NEPA compliance document and the RIA. However, ending fossil fuel production is outside the scope of this rulemaking, the purpose of which is to update the waste prevention requirements for oil and gas development on public lands. Like several other oil and gas regulations, the final rule may have some incidental public health and climate effects, but the BLM does not have authority to regulate air emissions for the benefit of public health or the climate, and the final rule is designed to address waste prevention and royalty accountability.

A commenter advocated greater enforcement by the BLM. The BLM regularly reviews its enforcement programs for effective deployment of its resources. Enforcement plans, however, are outside the scope of this rulemaking.

A commenter asserted that the BLM underestimated historical venting and flaring. The BLM has used the best available data. That data show that the current regulation at NTL–4A has failed to control venting and flaring, particularly over the last two decades. Thus, we agree with the commenter that a more effective regulation is needed to assure that operators exercise reasonable diligence to prevent waste.

The BLM also recognizes the benefits of gas capture, and the final rule encourages greater capture and sale of gas from oil wells. In part in response to these comments, the BLM included in § 3162.3–1 of the final rule an option for operators to self-certify that they will capture 100 percent of oil-well gas produced by an oil well as an alternative to submitting a waste management plan. If a self-certifying operator flares gas other than in response to a defined emergency, the loss is ''avoidable'' and fully royalty bearing. Although the BLM has no firm estimates for the number of operators who will self-certify, the option should both prevent waste and prove attractive for the reasons set forth elsewhere in this preamble.

Comments on Impact of the Rule on Indian Leases

Summary of Comments: Noting that the proposed rule was generally intended to apply in equal measure to Federal leases and Indian leases, one commenter criticized the rule for not addressing how flaring limitations and other features of the rule—given their potential to cause premature shut-in or curtailment of oil and gas production—may disproportionately impact Indian lessors who rely on production revenues and may not be as willing as the Federal Government to curtail or shut-in production in order to avoid what the commenter characterized as ''relatively minor'' losses of revenue resulting from venting or flaring. The commenter also contended that, under the various Indian leasing statutes—including the IMDA (25 U.S.C. 2101 *et seq.*)—the BLM must assure that the lands are developed in a manner that maximizes the ''best economic interests'' of Indian lessors.

Response: The BLM's regulations apply to oil and gas operations on Indian trust and restricted fee lands as provided by 25 CFR 221.1(c), 212.1(d), 225.1(c), and the BLM is the bureau tasked with regulating oil and gas operations on those lands by delegations to the BLM from the Secretary of the Interior. The purposes of the regulations of mineral development on Indian lands are to maximize the best economic interest of the Indian mineral owner and to minimize any adverse environmental or cultural impact. 25 CFR 221.1(a) (Tribal leases), 212.1(a) (allotted leases), 225.1(a) (IMDA). ''In considering whether it is 'in the best interest of the Indian mineral owner' to take a certain action . . . , the Secretary shall consider any relevant factor, including, but not limited to: economic considerations, such as date of lease expiration; probable financial effect on the Indian mineral owner; leasability of land concerned; need for change in the terms of the existing lease; marketability; and potential environmental, social, and cultural effects.'' 25 CFR 211.3, 212.3, 225.3. *Accord, e.g.,* 25 U.S.C. 2103(b) (IMDA). Thus, economic considerations, such as immediate production of oil, are relevant factors, but they are not the sole factors; the regulations promulgated in accordance with the BLM's statutory authority give the Secretary broad discretion. The Secretary thus has discretion to require operators producing Indian oil to take reasonable measures to reduce waste of Indian resources, to define avoidably lost gas, and to require payment of royalties to the Indian lessors on avoidably wasted gas.

Since the final rule will apply equally on Indian lands as it does on Federal lands, there will be no disproportionate impact on Indian leasing or development. It might be that on some leases at some times, Indian royalty payments would temporarily decrease as oil production is curtailed while the operator complies with the final rule. We have no reason to believe that total long-term revenues from such leases would suffer, rather we believe they will increase as the operators pay royalties on the gas as well as on the oil. Indeed, for many leases there is likely to be no decrease in royalty payments, and most likely there will be increases in royalty payments because operators will pay royalties on captured or flared gas with little or no interruption of oil sales.

We do not believe that the final rule will cause premature plugging and abandonment of otherwise profitable wells. Every day, oil wells on Indian lands, as on Federal lands and elsewhere, are produced at capacity, curtailed, shut in, or plugged and abandoned based on a variety of factors, including production quantity and quality, costs of production, availability of transportation, and commodity prices. Although it is possible that

[138] 43 U.S.C. 1701(b).

compliance with the final rule may increase net costs for some operators, it would be only one of many business costs for operators and is likely not as determinative for continuing operations as are the changes in prices for the oil or gas, either positive or negative. There is nothing improper in the final rule's requirements to reduce waste of Indian gas and to pay royalties to the Indian mineral owners on gas that would otherwise be wasted. The final rule has not been changed in response to the comment.

Comments on the RIA

In preparing the final rule, the BLM updated the numbers in the proposed RIA. The updated RIA indicates that the final rule would cost $19.3 million per year (using a 7 percent discount rate to annualize capital costs), while generating private costs savings benefits of around $1.8 million per year and ancillary effects on society from reduced methane emissions of around $17.9 million per year, with total benefits averaging around $19.7 million per year. The updated RIA estimates that the final rule would generate $51 million per year in royalties. The projected costs changed from the RIA for the proposed rule to the RIA for the final rule because the final rule does not include certain requirements from the proposed rule, such as pneumatic control devices, thereby reducing the rule's costs.

The BLM received a comment stating that the BLM's estimated burden hours for operators to prepare a WMP was too low. In response, the BLM notes that there are significantly fewer requirements for a WMP in the final rule as compared with the proposed rule. Therefore, we believe that our estimate of 1 hour is appropriate.

One commenter disagreed with the BLM's estimate regarding the projected number of orifice meters that would be installed the first year. The intent of the comment is not entirely clear because it only indicates the commenter's view that an estimated installation of 968 meters appears to be inaccurate but does not specify the nature of the inaccuracy or how the inaccuracy is a burden to operators. In the final RIA, the BLM estimates that there would be a total of 902 meters installed and explains that it uses the 1,050 Mcf threshold to determine the number of meters installed because the final rule requires all high-pressure flares with more than 1,050 Mcf of flaring per month to measure flaring.

The BLM received a comment expressing concern with the administrative burden resulting from the proposed rule. The BLM addresses administrative burdens in the RIA and the accompanying supporting statement under the Paperwork Reduction Act. In the RIA for the final rule, the BLM estimates that the total annual administrative burden of the final rule will be about $8.9 million. The BLM notes that the requirements for a WMP have been significantly reduced in the final rule. In the final rule, the WMP only requires information operators would have readily available when submitting an APD. The information collection activity associated with the WMP required for this rule is 1 hour of additional time to complete an APD. Further, operators have the option of self-certifying that they will commit to capture 100 percent of the gas and thus avoid the administrative cost of preparing a WMP. The information collection activity associated with either preparing and submitting the WMP or the self-certification is 1 hour of administrative time. The BLM believes operators submitting APDs for multiple wells on a single well pad will be able to simply copy and paste the WMP from one well's APD into the next well's APD. This copying and pasting for a multi-well pad also has an information collection burden of 1 hour, which most likely overestimates the time it will take operators to copy and paste the information from one document into another. And the final rule does not require ''complete and adequate'' information in a WMP as proposed, but does require the WMP to be technically and administratively complete. The phrase ''technically and administratively complete'' is further explained in the preamble discussion for § 3162.3–1.

V. Section-by-Section Discussion

The following table is provided to aid the reader in understanding the changes from the proposed rule section numbers and names to the final rule sections.

TABLE 1 TO IV—SECTION-BY-SECTION CHANGES MADE FROM THE PROPOSED TO THE FINAL RULE

Proposed rule section	Final rule section
3162.3–1 Drilling applications and plans	3162.3–1 Drilling applications and plans.
3179.1 Purpose	3179.1 Purpose.
3179.2 Scope	3179.2 Scope.
3179.3 Definitions and acronyms	3179.10 Definitions and acronyms.
	3179.11 Severability.
	3179.30 Incorporation by reference (IBR).
	3179.40 Reasonable precautions to prevent waste.
3179.4 Determining when the loss of oil or gas is avoidable or unavoidable.	3179.41 Determining when a loss of oil or gas is avoidable or unavoidable.
3179.5 When lost production is subject to royalty	3179.42 When lost production is subject to royalty.
	3179.43 Data submission and notification requirements.
3179.6 Safety	3179.50 Safety.
3179.7 Gas-well gas	3179.60 Gas-well gas.
3179.8 Oil-well gas	3179.70 Oil-well gas.
3179.9 Measuring and reporting volumes of gas vented and flared	3179.71 Measurement of flared oil-well gas volume.
	3179.72 Reporting and recordkeeping of vented and flared gas volumes.
3179.10 Determinations regarding royalty-free flaring	3179.73 Prior determinations regarding royalty-free flaring.
3179.11 Incorporation by reference (IBR)	*Renumbered to 3179.30.*
3179.12 Reasonable precautions to prevent waste	*Renumbered to 3179.41.*
Flaring and Venting Gas During Drilling and Production Operations	
3179.101 Well drilling	3179.80 Loss of well control while drilling.
3179.102 Well completion and related operations	3179.81 Well completion and recompletion flaring allowance.
3179.103 Initial production testing	*Removed.*
3179.104 Subsequent well tests	3179.82 Subsequent well test for an existing completion.

TABLE 1 TO IV—SECTION-BY-SECTION CHANGES MADE FROM THE PROPOSED TO THE FINAL RULE—Continued

Proposed rule section	Final rule section
3179.105 Emergencies	3179.83 Emergencies.
Gas Flared or Vented from Equipment and During Well Maintenance Operations.	
3179.201 Pneumatic controllers and pneumatic diaphragm pumps	*Removed.*
3179.203 Oil storage vessels	3179.90 Oil storage tank vapors.
3179.204 Downhole well maintenance and liquids unloading	3179.91 Downhole well maintenance and liquids unloading.
3179.205 Size of production equipment	3179.92 Size of production equipment.
Leak Detection and Repair (LDAR)	
3179.301 Leak detection and repair program	3179.100 Leak detection and repair program.
3179.302 Repairing leaks	3179.101 Repairing leaks.
3179.303 Leak detection inspection recordkeeping and reporting	3179.102 Leak detection inspection recordkeeping and reporting.
State or Tribal Variance	
3179.401 State or Tribal requests for variances from the requirements of this subpart.	*Removed.*
Immediate Assessments	

A. 43 CFR Part 3160—Onshore Oil and Gas Operations

Section 3162.3–1 Drilling Applications and Plans

Existing § 3162.3–1 contains the BLM's longstanding requirement for the operator to submit an APD prior to conducting any drilling operations on a Federal or Indian oil and gas lease. Drilling may only commence following the BLM's approval of the APD. The proposed rule would have added two new paragraphs to § 3162.3–1, intended to help operators and the BLM avoid situations where substantial volumes of associated gas are flared from oil wells due to inadequate gas capture infrastructure.

Proposed § 3162.3–1(j) would have required an operator to provide a WMP with its APD for an oil well, demonstrating how the operator intended to address the capture of associated gas from an oil well when production begins. The purpose of the proposed WMP was to help the BLM understand how much associated gas could be wasted as a result of the approval of an APD. The proposed WMP required the inclusion of the following information with an oil-well APD: the anticipated completion date of the oil well; a description of the anticipated production of both oil and associated gas; a certification that the operator has informed at least one midstream processing company of the operator's production plans; and information regarding the gas pipeline to which the operator plans to connect. If an operator was not able to identify a gas pipeline with sufficient capacity to accommodate the anticipated associated gas production, the WMP would have been required to also include the following information: a gas pipeline system map showing the existing pipelines within 20 miles of the well and the location of the closest gas processing plant; information about the operator's flaring from other wells in the vicinity; and a detailed evaluation of opportunities for alternative on-site capture methods, such as compression of the gas, removal of Natural Gas Liquids (NGL), or other capture means. Finally, the operator would have been required to include any other information demonstrating the operator's plans to avoid the waste of gas production from any source, including pneumatic equipment, storage tanks, and leaks.

The purpose of the proposed WMP was for the operator to provide the BLM with information necessary to understand how much associated gas would be lost to flaring if the BLM were to approve the oil-well APD and whether the loss of that gas would be reasonable under the circumstances. If the WMP were to demonstrate that approving an otherwise administratively and technically complete APD could result in undue waste of Federal or Indian gas, the proposed § 3162.3–1(k) would have authorized the BLM to take one of the following actions: the BLM could have approved the APD subject to conditions for gas capture and/or royalty payments on vented and flared gas; or the BLM could have deferred action on the APD in the interest of preventing waste. If the potential for undue waste had not been addressed within 2 years of the applicant's receipt of the notice of the deferred action, under the proposed rule the BLM would have denied the APD.

The BLM received numerous comments on the proposed WMP. Based on those comments, we believe there was some confusion about when a WMP would be required. For both the proposed and final rules, a WMP is required when a Federal or Indian APD is required. In both the proposed and final rules, only wells that are being drilled to target oil production—in other words Federal or Indian oil-well APDs—will require a WMP. The BLM assumes that if an operator is drilling a gas well, there is a predetermined market for the gas or a plan to shut in wells until gas infrastructure is built. For this reason, if a well is being drilled to a known gas formation and will be producing primarily gas, the Federal or Indian APD does not require a WMP.

Based on public comment, the BLM has revised the content of the proposed WMP in this final rule. Many commenters said the waste minimization requirements were overly burdensome for both the BLM and operators. In addition, commenters read the requirements as calling for operators to provide proprietary, confidential information belonging to midstream companies that operators are unable to provide. Commenters were also concerned about how the BLM would evaluate an operator's WMP, pointing to subjective language in proposed § 3162.3–1(j) indicating that the BLM could deny an APD if the operator failed to submit a complete and ''adequate'' WMP. Many commenters said the proposed required information for the WMP failed to meet the BLM's stated objectives of understanding associated

gas capture and reducing waste through flaring prior to approval of a Federal or Indian APD.

After evaluating the primary objective of the WMP, which is to ensure operators have adequately planned to reduce associated gas waste prior to drilling an oil well, the BLM agrees with commenters that the rule can be effective without requiring all the information in the proposed rule. The proposed rule required 19 pieces of information for the WMP for the operator to demonstrate to the BLM that it had sufficiently planned for the capture or sale of associated gas from an oil well. After careful consideration of the comments and the purpose of a WMP, the BLM in the final rule is reducing the information required to 4 pieces in a WMP: (1) initial oil production estimates and decline, (2) initial gas production estimates and decline, (3) certification that the operator has an executed gas sales contract to sell 100 percent of the produced oil-well gas, and (4) any other information demonstrating the operator's plans to avoid the waste of gas.

The BLM agrees with the commenters that BLM's objective—determining if an operator has a plan to capture the produced gas—can be accomplished with less information. And as mentioned above, the BLM intends to eschew collection of information that could be proprietary or confidential. The final rule also provides operators with an alternative to the submission of a WMP with their APDs by allowing operators to instead submit a self-certification statement that the operator will be able to capture, as defined in final § 3179.10, 100 percent of the oil-well gas that the oil well produces.

The BLM has required the anticipated initial production rate and 3 years of production decline because the BLM has concluded that 3 years of data will sufficiently cover the ordinarily steep decline for production for unconventional reservoirs and the associated establishment of the reservoir's production decline curve. This information provides the BLM with an estimate of how much associated gas could be flared, the size of production equipment required at initial production, and the size of production equipment required when production has leveled off. The WMP information is relevant to understand not only the volume at risk for flaring, but also how the sizing of the production equipment affects tank vapors. (If the production equipment is undersized or there is insufficient separation upstream of the production tanks, there will be more gas wasted as tank vapors.) Approved APDs with a WMP will be subject to the flaring limitations identified in final § 3179.70 once the well begins producing. The BLM believes the revised waste minimization requirements reduce the burden on operators, reduce the review time for the BLM, eliminate any concern of providing proprietary or confidential information, and increase the BLM's understanding of the disposition of the associated gas from an oil well to ensure the public receives a fair return for its oil and gas.

As an alternative to the submission of a WMP with the APD, § 3162.3–1(d)(4) of the final rule allows operators to submit a self-certification. Section 3162.3–1(k) provides that a self-certification is a statement by the operator that it will be able to capture, as defined in final § 3179.10, 100 percent of the oil-well gas that the oil well produces. If the operator elects to self-certify, all flared oil-well gas, except for gas flared under emergencies as identified in § 3179.83, is an avoidable loss with a royalty obligation and is not subject to the unavoidable loss threshold in § 3179.70(a). In the case of self-certification, 100 percent of the oil-well non-emergency flared gas has a royalty obligation from the date of first production until the well is plugged and abandoned. The BLM offers the self-certification alternative to accommodate operators who may consider this option an advantageous business alternative while ensuring the public receives a fair return for its oil and gas. An operator might choose to avoid having to submit a WMP because it can be relatively easy to design, build, and operate its facilities to capture all of the gas and sell it. In addition, an operator may want to accelerate drilling and development in lieu of waiting for a gas contract and accept the additional royalty obligation as a business expense should the operator need to flare following drilling and completion.

The BLM's approval process for the WMP or the self-certification statement appears in the new final § 3162.3–1(l). With this addition, the BLM has clarified for operators how the Bureau will evaluate a WMP or self-certification statement. Upon review of the WMP or the self-certification, the BLM may take one of the following actions: (1) approve an administratively and technically complete oil-well APD with a WMP, subject to the conditions for flared gas described in § 3162.3–1(j); (2) approve an administratively and technically complete oil-well APD with a self-certification statement for associated gas capture subject to the conditions for flared gas described in § 3162.3–1(k); or (3) defer action on an APD that is not administratively or technically complete in the interest of preventing waste until such time as the operator is able to amend its APD to comply with the requirements in either § 3162.3–1 paragraph (j) or (k).

The final rule replaces the subjective term ''adequate'' in this section with the term ''administratively and technically complete.'' The concept ''administratively and technically complete'' appears in the original § 3162.3–1(d), which states that ''[p]rior to approval, the application shall be administratively and technically complete.'' To be administratively complete, an APD must contain all the required components: a drilling plan, a surface use plan of operations, evidence of bond coverage, other information as may be required by applicable orders and notices, and, with the finalization of this rule, for an oil well, a WMP or self-certification. For an APD to be technically complete, the APD must fulfill all the requirements of each of the components and be technically correct pursuant to any applicable orders and notices. For example, an APD is not administratively complete if it does not include a drilling plan. If the APD does include a drilling plan, but the drilling plan fails to include the appropriate blowout prevention equipment, as required in 43 CFR subpart 3172, then the drilling plan is not technically complete.

A WMP or self-certification will now be a required component of an APD for it to be administratively complete. If an operator does not submit a WMP or a self-certification statement with the APD, then the APD will not be administratively complete. For the WMP or self-certification to be technically complete, it must contain the required information in final § 3162.3–1 paragraph (j) or (k). If the operator submits a WMP that includes only the anticipated oil production decline curve for 1 year, then the APD is not technically complete. If an operator fails to include a WMP or self-certification as required or if the WMP or self-certification fails to meet the requirements in § 3162.3–1 paragraph (j) or (k), then the BLM will defer action on the APD until the operator amends the APD to comply with the requirements of administrative and technical completeness.

Final § 3162.3–1(l)(3) limits the time in which the operator must address deficiencies in the WMP or the self-certification to within 2 years of submission of the APD. If the operator does not meet this deadline, then the

BLM may disapprove the APD. This change conforms the WMP or self-certification process with the rest of the current § 3162.3–1 and review process. Furthermore, a 2-year limit provides operators with sufficient time to either secure a gas sales contract or proceed with self-certification in the absence of a sales contract. The 2-year time limit also ensures that an APD will not remain in a pending status with the BLM for an extended period because of an operator's lack of diligence or inability to complete its application. A 2-year limit is reasonable for an operator who intends to drill on a lease and is capable of submitting a complete WMP or self-certification.

B. 43 CFR Part 3170—Onshore Oil and Gas Production

Section 3179.1 Purpose

Final § 3179.1 has only one change from the proposed rule. The BLM changed the name of the Osage Tribe to the Tribe's official name, The Osage Nation, which the Tribe adopted in 2008. The purpose of subpart 3179 remains unchanged in the final rule and continues to implement and carry out the purposes of statutes relating to the prevention of waste from Federal and Indian oil and gas leases, conservation of surface resources, and management of the public lands for multiple use and sustained yield, including section 50263 of the IRA.

This final rule section continues to clarify that upon publication, final subpart 3179 supersedes those portions of NTL–4A that pertain to, among other things, flaring and venting of produced gas, unavoidably and avoidably lot gas, and waste prevention. Subpart 3178, published on November 18, 2016 (81 FR 83078), superseded the portions of NTL–4A that pertain to oil or gas used on lease for beneficial purposes (see 43 CFR subpart 3178). With the final publication of subpart 3179, NTL–4A has been superseded in its entirety.

Section 3179.2 Scope

Section 3179.2 of the final rule continues to identify the operations to which the various provisions of subpart 3179 will apply. Paragraph (a) states that, in general, the provisions of the final rule apply to: (1) all onshore Federal and Indian (other than The Osage Nation) oil and gas leases, units, and communitized areas; (2) IMDA agreements, except in certain circumstances described in the rule text; (3) leases and other business agreements and contracts for the development of Tribal energy resources under a Tribal Energy Resource Agreement entered into with the Secretary, except under certain circumstances; and (4) wells, equipment, and operations on State or private tracts that are committed to a federally approved unit or CA. Final § 3179.2(a) removes the duplication of the words ''provided in'' that appeared in the proposed rule.

Final paragraph (b) is substantially the same as proposed paragraph (b). The only change in the final rule is that the crossed-referenced sections have been revised to reflect the new section numbers. As in the proposed rule, it provides that certain provisions in subpart 3179, namely redesignated §§ 3179.50, 3179.90, and 3179.100 through 102, apply only to operations and production equipment located on a Federal or Indian oil and gas surface estate and do not apply to operations on State or private tracts, even where such tracts are committed to a federally approved unit or CA, sometimes referred to as ''mixed ownership'' agreements.

As in the proposed rule, final § 3179.2(b) implicates a question regarding the BLM's authority raised by the court that vacated the 2016 Waste Prevention Rule. That court stated that the MLA ''does not provide broad authorization for the BLM to impose comprehensive Federal regulations similar to those applicable to operations on Federal lands on State or privately-owned tracts or interests.'' [139] In that court's view, the BLM's authority to regulate unit or CA operations on State and private tracts under the MLA and FOGRMA may be limited to rates of development and matters directly relevant to the BLM's proprietary interest in the Federal minerals.[140] This rule does not reach a position on the full extent of the BLM's authority to regulate non-Federal lands. For purposes of this rule, however, we note that many provisions in the final rule—including final §§ 3179.41, 3179.70, 3179.81, 3179.82, and 3179.83 and the final measurement and reporting requirements in final §§ 3179.71 and 3179.72—have a direct impact on royalty revenue and apply to all operations producing Federal or Indian gas, whether on a Federal or Indian lease or as part of a mixed-ownership agreement. Other requirements—such as those related to storage tank hatches and the leak detection-and repair program—apply when the facilities are located on Federal or Indian surface estate because those requirements have a slightly less direct connection to royalties. While the BLM does not view that connection as dispositive of its authority in this sphere, it has in this rule chosen to limit application of these programs in light of the BLM's recent history of regulation and the possibility that further extending these requirements would generate relatively small marginal gains in revenue relative to other requirements.

The final rule redesignates sections throughout the subpart to standardize the organization of sections in part 3170 (*e.g.,* section numbers ending in ''30'' will be the sections that contain incorporation-by-reference material, as required, throughout part 3170). Further, the reorganization of the sections in part 3170 groups similar topics together under similar section designations for ease of use and readability.

Section 3179.10 Definitions and Acronyms

This final rule section contains definitions for 12 terms that are used in subpart 3179 as opposed to the 13 terms that appeared in the proposed rule. The BLM removed the proposed definition for ''storage vessel.'' Proposed § 3179.203, which pertained to oil storage vessels, was significantly revised based on public comment as discussed further below. Thus, the BLM removed the definition for ''storage vessel'' and substituted the more commonly understood term ''oil storage tank'' for ''storage vessel'' in the remainder of subpart 3179. The use of the common term ''oil storage tank'' brings the final subpart 3179 into alignment with the use of ''oil storage tank'' in current subpart 3174.

One commenter recommended that, ''for the purposes of this section, where there is a State definition that applies for the same BLM term, the BLM will apply the definition used in the State in which the applicable gas or oil well is located.'' The BLM is charged with ensuring that the public and Indian mineral interests receive a fair return for their oil and gas leases. That obligation necessarily entails the determination of a lessee's royalty obligation, which, in the case of waste prevention, relies directly on the BLM's consistent use of terms. The BLM would be unable to implement the requirements of this rule consistently—and to ensure a uniformly fair return—if the Bureau were to rely on multiple, varying, and changeable State definitions for the terms used in this regulation. Further, if the BLM were to adopt this approach, and there was a conflict between the BLM requirements and the State definition, there would be no clear path to resolution of the conflict. The BLM did not make changes

[139] *Wyoming* court at 1082.

[140] *Id.* at 1082–83.

to allow for the use of definitions from State code to apply to Federal and Indian oil and gas regulations for the State in which the production occurs.

The BLM received comments on the definition for ''automatic ignition system'' that agree with the BLM's approach to not require a specific type of device. The BLM agrees that the term ''automatic ignition system'' connotes the concept of an ignition source without specifying a particular type of device. To be clear, any applicable rule of the EPA, a State, or a Tribe regarding such equipment and its destruction efficiency apply to operations regulated by the BLM.

One commenter stated that requiring a continuous flame is wasteful and unnecessary. The BLM disagrees with this comment because the proposed definition of ''automatic ignition system'' only requires a continuous pilot flare where needed to ensure continuous combustion. The BLM believes the proposed definition allows for a great deal of operator flexibility and did not change the ''automatic ignition system'' definition based on the comments.

The BLM did not receive any comments on the proposed definitions for ''capture,'' ''compressor station,'' ''gas-to-oil ratio (GOR),'' or ''pneumatic controller.'' Therefore, these four definitions remain the same in final rule as in the proposed rule.

One commenter requested the BLM to add a definition for ''economic feasibility.'' The commenter's recommended definition mirrors part of the definition for ''economically marginal property'' found in subpart 3173. For the proposed rule, the BLM used the term ''economically infeasible'' in proposed § 3179.203(b), which addressed vapor recovery systems. Since the BLM has removed the requirement for a vapor recovery system on oil storage tanks in the final rule, the final rule no longer references the terms ''economically feasible'' or ''economically infeasible.'' Therefore, the BLM has not included a definition for ''economic feasibility'' in the final rule.

Commenters recommended that the BLM include a definition for the term ''exploratory well.'' The BLM has a definition for ''exploratory well'' in existing subpart 3172, but that definition applies within that subpart. Leaving the term undefined in this rule could cause confusion. Accordingly, we are adding the same definition of ''exploratory well'' to this rule as appears in 43 CFR 3172.5: ''[e]xploratory well means any well drilled beyond the known producing limits of a pool.'' Subpart 3179 resides in part 3170 Onshore Oil and Gas Production. The definitions that are used within multiple subparts of part 3170 reside in subpart 3170. Originally published in 1988 as Onshore Oil and Gas Order No. 2, subpart 3172 was codified in the CFR on June 16, 2023 (88 FR 39514). When the BLM revises subpart 3170, it will remove the definition for exploratory well from subpart 3172 and include it in subpart 3170 since the definition now applies to more than one subpart.

The BLM received numerous comments on the definition for ''gas well.'' The definition that the BLM included in the proposed rule was taken from the Conservation Division Manual 644.5. One commenter recommended including a definition that relied on a GOR standard throughout the rule and did not recommend incorporating any deference to the States' definitions in the rule. The commenter did not provide any recommendation for the appropriate GOR standard for a gas well. The BLM is aware that many States define a gas well in terms of GOR, and the GOR varies among State definitions. The BLM has decided not to change the proposed definition, which relies on whether the well produces more energy from gas or oil. The BLM has implemented that definition in the CDM for decades. Commenters did not explain how a GOR based definition would improve implementation of this final rule. Conversely, adopting a new definition—one relying on GOR—could create implementation conflicts insofar as the BLM chooses a GOR that differs from certain State definitions. Historically, the proposed and final rule definition has provided the BLM with regulatory flexibility when interacting with operators and State regulatory authorities by allowing BLM to adapt to reservoir changes throughout the life cycle of a well that may result in a well qualifying as an oil well initially and as a gas well later.

Another commenter recommended removing the BLM definition for ''gas well'' and reminded the BLM that in its January 11, 2023, virtual information forum, the BLM stated it uses the gas- or oil- well designation assigned by a State jurisdiction when resolving controversial issues. The BLM's statement at the virtual information forum was based on IBLA's interpretation of NTL–4A.[141] The BLM has determined that consistent implementation of this rule would be better served by a uniform definition of ''gas well'', which it is now promulgating in this final rule for the first time. The commenter expressed concerns regarding how any inconsistencies between State well designations and the BLM's ''gas well'' definition would be reconciled. The final rule does not affect States' implementation of their regulatory programs. Accordingly, the final rule does not need a mechanism for reconciling State well designations. The BLM did not change the definition for ''gas well'' in the final rule based on the comments received.

One commenter requested that the BLM change its definition of ''high-pressure flare'' to mean ''an open-air flare stack or flare pit that combusts natural gas at high-pressure volumes leaving a pressurized vessel greater than 100 psig or more and that in normal operations would go to a sales line.'' Based on the BLM's experience, we conclude that, by defining ''high-pressure flare'' as ''leaving a pressurized vessel greater than 100 psig,'' the rule would apply to less than 5 percent of flares at Federal or Indian oil-well facilities. Excluding 95 percent of flares would not accomplish the waste prevention goals of this rule. Conversely, in this final rule the BLM intends for any flare carrying gas from a pressurized vessel to be considered a high-pressure flare and to include most, if not all, flares that operate due to pipeline capacity constraints. The BLM did not change the definition to one that includes a pressure threshold to ensure that most of the associated gas flaring is regulated with this subpart.

Another commenter suggested the BLM revise the ''high-pressure flare'' definition to include any flare that would normally go to sales and provide a definition for ''low-pressure flare'' as associated gas from separation equipment that would not normally go to sales without compression. The BLM considered the recommended changes to the definition for ''high-pressure flare'' and ''low-pressure flare'' and changed the definition of ''high-pressure flare'' in response to comments. The final definition is: ''High-pressure flare means an open-air flare stack or flare pit designed for the combustion of natural gas that would normally go to sales.'' Under normal operating conditions, the gas from a pressurized vessel flows through a gas facility measurement point (FMP) and into a sales line, but, due to pipeline capacity constraints, the gas from the pressurized vessel sometimes goes to a flare instead. The BLM disagrees with the commenters that compression needs to be added to the ''high-pressure flare'' definition, and the BLM believes that defining a low-

[141] See Rife, 131 IBLA 357 (1994).

pressure flare as a flare that does not meet the definition of a high-pressure flare is sufficient for the requirements of this rule. A commenter suggested adding ''with sufficient pressure to otherwise be injected into the pipeline without the aid of a compressor.'' There are operations producing from Federal or Indian leases that use compression on-lease to have enough pressure to enter the sales line. Locations with compression also flare due to pipeline capacity issues. Therefore, the BLM did not add compression to the final definition of ''high-pressure flare.'' The BLM recognizes and agrees with the comments that the BLM's proposed definition for ''high-pressure flare'' would include gas from a second- or third-stage pressurized separation vessel at a lower pressure than would be required for sales. That is not the BLM's intent, and the definition was changed based on comments to better reflect that the requirements for high-pressure flares are meant for the flared production that would have gone to sales if there were adequate pipeline capacity.

A third commenter suggested that the BLM should define ''high-pressure flare'' as combustion of gas that does not require compression and that could be transported through the connected sales line. The BLM agrees with the commenter that a high-pressure flare combusts gas that normally flows to sales and changed the definition in response to the comment. However, the BLM did not include the phrase ''does not require compression'' in the final definition because that would inappropriately limit the definition of high-pressure flare. Some oil wells produce gas that would not need compression to enter a sales line, but if the gas is not routed to a sales line, it should be routed to a flare and therefore subject to the final requirements in § 3179.70. Accordingly, tethering the definition of ''high-pressure flare'' to the absence of compression might imply that a low-pressure flare *requires* compression, which is inaccurate as a matter of practice and does not reflect the BLM's intent.

For the proposed definition of ''leak,'' the BLM received comments suggesting removal of the three methods and standards by which a leak or release may be detected. Other commenters, though, stated that the definition should remain as proposed. For the final rule definition of ''leak,'' the BLM added the use of audio, visual, and olfactory (AVO) means for leak detection and removed the reference to ''a leaking vapor recovery unit'' as an example of a leak, since the requirements for installation of a vapor recovery unit have been removed from the final rule. The final rule LDAR program uses AVO detection methods and does not require operators to evaluate and possibly install vapor recovery equipment. See final §§ 3179.10 and 3179.100.

The BLM amended the final definition of ''leak'' to be consistent with the final rule's leak LDAR requirements. Commenters recommended that the removal of the detection methods from the definition. The BLM retained the detection methods in the definition to provide clarity for the regulated community and BLM inspectors. Leaks are not considered leaks unless they can be detected by one of the three methods provided in the definition. Further, the three identified methods for leak detection provide operators with facility inspection flexibility.

The BLM received several comments suggesting a rewording of the proposed definition for ''liquids unloading.'' For additional clarity, commenters recommended the following rewording to the definition, ''removal of liquid hydrocarbons or water in the wellbore that accumulated during production of a completed gas well.'' The rewording did not offer any substantive change from the proposed definition, which states ''removal of an accumulation of liquid hydrocarbons or water from the wellbore of a completed gas well.'' The BLM did not change the definition based on the comments received.

The BLM did not change the final rule definition for ''lost oil or lost gas'' based on comments received. The BLM received comments suggesting that the BLM expressly exclude royalty-free use of produced oil or gas on-lease from the definition.

The BLM does not consider royalty-free use of oil or gas on the lease to be ''lost oil or lost gas,'' but adding an express exclusion of royalty-free use in the proposed definition for ''lost oil or lost gas'' could have created confusion or conflict with the implementation of proposed § 3179.201, regulating pneumatic equipment. Pneumatic controllers and pneumatic diaphragm pumps use gas designated as on-lease and royalty-free use pursuant to subpart 3178. Subpart 3178, in turn, requires that any production used on-lease and royalty-free must be a reasonable volume, based on the type of equipment used. In the case of pneumatic equipment, proposed § 3179.201 would have limited the bleed rate to 6 scf per hour. Thus, if a pneumatic controller had a higher bleed rate than allowed in proposed subpart 3179 and an operator were reporting this use as on-lease use, then the controller would have been in compliance with subpart 3178 and out of compliance with proposed subpart 3179. For this reason, the BLM removed the pneumatic equipment requirements in proposed § 3179.201 and did not change the definition for ''lost oil or lost gas'' in this final subpart.

The BLM received comments recommending a change to the definition of ''low-pressure flare.'' The proposed rule defined a ''low-pressure flare'' as any flare that does not meet the definition of a ''high-pressure flare.'' Based on comments received, the BLM changed the definition for a ''high-pressure flare'' to state that it combusts gas that would normally go to sales. Multiple commenters suggested defining the ''low-pressure flare'' as one that would not normally go to sales without compression. Since the definition for a ''high-pressure flare'' now requires that the gas stream would normally go to sales, the proposed definition for ''low-pressure flare'' as one that is not a ''high-pressure flare'' accomplishes what the commenters recommended. The BLM did not change the proposed definition of ''low-pressure flare'' in the final rule based on the comments.

One commenter suggested including a definition for ''oil well.'' NTL–4A does not contain a definition for either ''oil well'' or ''gas well.'' However, the 2016 and 2018 rules that have been vacated by the court did contain a definition for an ''oil well.'' The BLM believes that defining a ''gas well'' is sufficient for the purposes of this rule. The BLM acknowledges that the 2016 and 2018 versions of this rule provide a definition for ''oil well'' that mirrors the definition for a ''gas well.'' However, this final rule definition of a ''gas well'' necessarily implies that an ''oil well'' is one that is not a ''gas well.'' The final rule definition for gas well reads, ''Gas well means a well for which the energy equivalent of the gas produced, including its entrained liquefiable hydrocarbons, exceeds the energy equivalent of the oil produced. Unless more specific British thermal unit (Btu) values are available, a well with a GOR greater than 6,000 standard cubic feet (scf) of gas per barrel of oil is a gas well.'' Based on the final definition of ''gas well,'' the BLM believes it functionally supplies a definition for an oil well as one that produces more energy in oil than in gas. The BLM did not add a definition for an oil well to the final rule based on this one comment.

The proposed rule defined ''unreasonable and undue waste of gas'' to mean a frequent or ongoing loss of gas that could be avoided without causing

an ultimately greater loss of equivalent total energy than would occur if the loss of gas were to continue unabated. The BLM requested comment on the definition of ''unreasonable and undue waste of gas'' in the proposed rule as well as comment on a proposed alternative definition: ''Unreasonable and undue waste of gas means a frequent or ongoing loss of substantial quantities of gas that could reasonably be avoided if the operator were to take prudent steps to plan for and manage anticipated production of both oil and associated gas from its operation, including, where appropriate, coordination with other nearby operations.'' One commenter specifically suggested the inclusion of the qualifier ''that is economically feasible to avoid'' after ''or the ongoing loss of gas'' in the proposed definition, stating that the BLM has always considered economics in making the determination as to whether the loss of gas is avoidable or unavoidable. The commenter continued that the removal of economic considerations makes the rule ''unwieldy,'' and ''significantly reduces the BLM's ability to efficiently administer this regulatory program.'' A number of commenters recommended the removal of the term ''unreasonable and undue waste'' that was tied to the proposed WMP, LDAR, and oil-well flaring requirements. Commenters stated the proposed definition is inconsistent and arbitrary and does not provide clear guidance. Another commenter recommended modifications to the proposed alternative definition, which included the addition of a sentence stating, ''This includes all venting and flaring of gas unless it arises due to circumstances beyond the control of the operator or due to temporary operational necessities that render abatement options infeasible or unsafe.'' The BLM considered all the comments received on the proposed and alternative definitions of unreasonable and undue waste, as discussed in the next paragraph.

Oil and gas deposits are nonrenewable resources and therefore waste prevention and resource conservation are reasonable requirements for producing operations, as provided for and required by statute. In the more than 40 years since the publication of NTL–4A, oil and gas industry technology has advanced significantly, the market has shifted from viewing associated gas as a waste product to a commodity, yet loss of gas from Federal and Indian oil wells has increased in total and on a per barrel produced basis. An economic feasibility analysis is highly dependent on multiple variables that one may choose to include in the analysis, while the more simplified, sensible approach that the BLM is using here does not require such a multivariate analysis. With the final rule, the BLM has decided to not carry forward the proposed definition of ''unreasonable and undue waste of gas'' and removed the term from the final rule definitions and references to the definition in that appeared in the proposed rule at § 3162.3–1(k), § 3179.8(b), and § 3179.301. The BLM has determined that the proposed definition and its alternative proposed definition might create unnecessary confusion and, moreover, is not relevant for purpose of carrying out final § 3179.70(b) and § 3179.100. The proposed definitions would made it unnecessarily difficult for the BLM to take enforcement actions given the multivariate nature of the definition. Indeed, the final rule does not use the term ''unreasonable and undue waste of gas'' anywhere in the regulatory text. Therefore, the BLM removed the definition.

For the final rule, one commenter suggested that the BLM add a definition for the term ''vapor recovery tower.'' Since the BLM removed the provisions for vapor recovery equipment in the proposed § 3179.203 in response to comments, the BLM does not believe the addition of a definition for a ''vapor recovery tower'' serves any purpose in the final rule. The BLM did not add a definition to the final rule based on this comment and the changes made in the final rule.

Section 3179.11 Severability

This new section describes the legal principle of ''severability'' and applies it to the regulations in subpart 3179. If any portion of these regulations were found invalid or unenforceable as to a particular set of circumstances or particular people, the remaining portions of the regulations would remain in effect and the BLM could continue to enforce them.

The BLM has included this severability section in the final rule to make its intent clear that the various provisions in the regulation are independent and that any of the sections of this final rule may either stand alone or work together and are therefore severable. If a court were to find certain sections invalid, the remaining sections of the rule would remain in effect.

Section 3179.30 Incorporation by Reference (IBR)

This final rule incorporates one industry standard without republishing the standard in its entirety in the CFR, a practice known as incorporation by reference. This standard was developed through a consensus process, facilitated by the American Petroleum Institute (API), with input from the oil and gas industry. The BLM has reviewed this standard and determined that it will further the purposes of § 3179.71 of this final rule. This standard reflects the industry-accepted standard for the testing and reporting protocols for a flare gas meter within a Flare Flow Meter System. Under § 3179.71(c), ultrasonic meters used in high-pressure flare systems must be tested for flare use. The legal effect of IBR is that the incorporated standard becomes a regulatory requirement. This final rule incorporates the specific version of the standard listed. The standard referenced in this section would be incorporated in its entirety.

The incorporation of the industry standard follows the requirements found in 1 CFR part 51. The industry standard can be incorporated by reference pursuant to 1 CFR 51.7 because, among other things, it would substantially reduce the volume of material published in the **Federal Register**; the standard is published, bound, numbered, and organized; and the standard proposed for incorporation is readily available to the general public through purchase from the standard organization or through inspection at any BLM office with oil and gas administrative responsibilities. 1 CFR 51.7(a)(3) and (4). The language of incorporation in final 43 CFR 3179.30 meets the requirements of 1 CFR 51.9.

The API material that the BLM is incorporating by reference is available for inspection at the Bureau of Land Management, Division of Fluid Minerals, U.S. Department of the Interior, 1849 C Street NW, Washington, DC 20240, telephone 202–208–3801; and at all BLM offices with jurisdiction over oil and gas activities.

The API material is also available for inspection and purchase from API, 200 Massachusetts Avenue NW, Suite 100, Washington, DC 20001–5571; telephone 202–682–8000; online purchase *https://www.apiwebstore.org/Standards.* In addition, the API provides free read-only access to the API standard that the BLM has incorporated by reference via an online reading room *https://publications.api.org/.*

The following describes the API standard that the BLM incorporates by reference in this final rule:

API Manual of Petroleum Measurement Standards (MPMS) Chapter 22.3, Testing Protocol for Flare Gas Metering; First Edition, August 2015 (''API 22.3''). This standard covers the testing and reporting protocols for natural gas flare meters. This standard discusses the testing to be performed, how the test data should be analyzed, and how measurement uncertainty is determined based on the test data.

In the proposed rule, the BLM included two GPA Midstream Association standards that would have addressed requirements in proposed § 3179.203(c) for sampling and analysis in the evaluation of the installation of vapor recovery equipment. Since the BLM has removed the vapor recovery equipment requirements from the final rule, there is no longer a need to incorporate those two industry standards and they have been removed.

In response to comments, the BLM in the final rule has expanded the acceptable methods for measuring flared oil-well gas volumes from orifice meters to also include ultrasonic meters. Since ultrasonic meters are not an approved method of measurement at FMPs pursuant to 43 CFR subpart 3175, the BLM is including the testing protocol from API 22.3 to ensure ultrasonic metering accuracy for high-pressure flares. Operators who use ultrasonic meters for flare measurement are required to ensure that these meters are tested for flare use pursuant to API 22.3. The test result report based on API 22.3 must be made available to the AO upon request.

The BLM received a number of comments requesting the inclusion of API MPMS Chapter 14.10 Natural Gas Fluids Measurement—Measurement of Flow to Flares, December 2021, in the industry standards that are incorporated by reference. The BLM elected not to include this standard for reasons outlined in the discussion for § 3179.71 of this preamble.

Section 3179.40 Reasonable Precautions To Prevent Waste

The BLM redesignated this section from § 3179.12 in the proposed rule to § 3179.40 in the final rule. The BLM received comments on this section stating that the section: (1) is vague and would be difficult for the BLM to enforce consistently among field offices; (2) uses the MLA's ''reasonable precautions to prevent waste'' language absent actionable requirements; and (3) would allow the BLM to exercise open-ended discretion divorced from regulatory requirements because it allows the BLM, under proposed paragraphs (b) and (c), to prescribe ''reasonable measures'' as conditions of approval of an APD. One commenter supported the BLM's inclusion of the ''reasonable precautions to prevent waste'' language in this section and concurred with the BLM's conclusion that what may constitute reasonable precautions to prevent waste may change over time.

In response to these comments, the BLM notes that the proposed section simply reflects the BLM's existing statutory authority—already enshrined by Congress in the MLA—to require reasonable precautions for preventing waste. The BLM cannot ignore that statutory authority and duty. And insofar as commenters suggest that the BLM's regulation is in tension with other regulations—such as the application of royalties to enumerated categories of ''avoidably lost'' gas—the BLM notes that it cannot act contrary to statute or regulation and, where regulations provide the BLM with discretion, it must exercise reasoned decision making in accordance with the APA. Against these background principles, commenters did not provide specific examples of any conflicts between § 3179.40 and other regulations or requirements. Nor did commenters provide specific examples of how any conceptual tension between the MLA's ''reasonable precautions'' language and the final regulations would manifest as an irreconcilable and unworkable conflict with these or any other Department regulations.

Indeed, the BLM routinely attaches conditions to APDs, chiefly to apply general statutory and regulatory commands to site-specific conditions, and to apply lease stipulations to particular wells. If an operator requests a variance under § 3170.6, for instance, which requires the alternative to meet or exceed the current requirement, the BLM may grant the variance with reasonable measures for the implementation of the variance. To date, operators have not objected to the BLM's reasonable measures included with Conditions of Approval for APDs or approvals of measurement variance requests. Further, any decision the BLM makes to prescribe ''reasonable measures'' that an operator believes causes harm may be appealed pursuant to §§ 3165.3 and 3165.4. The BLM did not change this section in response to comments and the final rule section remains the same as the proposed section, except for redesignating the section.

Section 3179.41 Determining When the Loss of Oil or Gas Is Avoidable or Unavoidable

The BLM redesignated this section from § 3179.4 in the proposed rule to § 3179.41 in the final rule. In paragraph (a) of this section, the BLM considers lost oil as an unavoidable loss when the operator has taken reasonable steps to avoid waste and has complied fully with applicable laws, lease terms, regulations, provisions of a previously approved operating plan, and other written orders of the BLM. Likewise in paragraph (b) of this section, the BLM considers lost gas as an unavoidable loss based on the grounds described in paragraph (a) for lost oil, but with a list of operations or sources from which the gas is lost to qualify as unavoidably lost. Proposed paragraph (b) in this section contained 14 operations for which gas lost would be considered an unavoidable loss. The final rule section contains 13 operations for which gas lost would be considered an unavoidable loss. The BLM removed one operation: initial production testing. The BLM also removed the term ''prudent'' from the determinations of unavoidably lost oil and unavoidably lost gas because it could cause confusion with the prudent operator standard discussed above, and it is not required for those determinations.

One commenter pointed out that the proposed rule did not address force majeure, or act-of-God events, such as extreme weather conditions, and requested that this type of event should be included in the list of unavoidable losses. The commenter explained that, in its view, force majeure events may not qualify as ''emergencies,'' as that term is defined in the proposed rule and the IRA. In the BLM's experience in considering NTL–4A Sundry Notices, it has encountered operators who have claimed that pipeline capacity issues should be considered force majeure events since, in the operators' view, any gas flared because of a capacity issue is out of its control. The BLM has concluded that pipeline capacity issues are neither force majeure events, nor outside an operator's control. As discussed above, operators have various options to reduce associated gas flaring when there are pipeline capacity issues, such as curtailing oil production until pipelines become available, and an operator's choice to continue oil production unabated when there is no available pipeline capacity should not mean that the public must lose the value of the royalties for that flared gas. The BLM disagrees with the comment and will not include ''force majeure'' in the

list of unavoidable losses in final § 3179.41(b). The emergency provision in the final rule will cover most events that are traditionally thought of as ''force majeure'' events, but provides clearer standards focused on situations that are true emergencies rather than simply all those arguably beyond the operator's control. As discussed below, final § 3179.83 defines an emergency situation as a temporary, infrequent, and unavoidable situation in which the loss of gas is necessary to avoid a danger to human health, safety, or the environment. For the first 48 hours of an emergency, the lost gas is royalty free.[142] It is worth noting that if a ''force majeure'' event prevented production and sale of oil, there would be little or no venting or flaring.

Commenters on this proposed section disagreed with the time or volume limits set within sections cited in the unavoidable loss list of operations in proposed § 3179.4(b). In most instances, the commenters believed the set limits to be too low and found them to be arbitrary. The BLM has addressed the time or volume limits in final §§ 3179.70, 3179.81, 3179.82, and 3179.83. Each of these sections discusses the comments received and the BLM's response to the comments separately.

Numerous commenters objected to the list of unavoidable loss operations for lost gas and recommended keeping the NTL–4A rule established 40 years ago, under which the BLM evaluates each event on a case-by-case basis. Under the commenters' reading of these documents, gas may be wasted, royalty-free, so long as the economics of production do not justify the funding and construction, by a single lessee, unit PA, or CA, of infrastructure, such as a redundant pipeline system or a gas plant. As set forth above, nothing in the MLA requires adoption of commenters' reading of the prudent operator standard, and, properly considered, even if applicable that standard does not foreclose the BLM from regulating the massive and increasing volume of waste generated from the development of public minerals: as noted in the proposed rule preamble, the average amount of flared associated gas per barrel of oil produced has increased 102 percent between the decade beginning in 1990 and the decade beginning in 2010.

Even on their own terms, NTL–4A and the CDM 644.5 were designed to allow these outcomes. For example, CDM 644.5 explains that ''economics of conserving gas must be on a field-wide basis, and the Supervisor must consider the feasibility of a joint operation between all other lessees/operators in the field or area.'' Because most gas pipelines or gas plants do not require a single well to supply them to capacity, but rather service multiple wells, it is inappropriate to weight the costs of infrastructure against the value of the gas produced by a single well or lease.

The BLM also received comments suggesting that the proposed rule's definition of ''avoidable loss'' is inconsistent with 43 CFR 3162.7–1(d). That section first provides that ''[t]he operator shall conduct operations in such a manner as to prevent avoidable loss of oil and gas.'' In a separate sentence, the regulation states that ''[an] operator shall be liable for royalty payments on oil or gas lost *or* wasted from a lease site . . . when such loss or waste is due to negligence on the part of the operator of such lease, *or* due to the failure of the operator to comply with any regulation, order or citation issued pursuant to'' 43 CFR part 3160 (emphasis added).

Commenters appear to have read this regulation as equating ''avoidable loss'' with negligence or noncompliance with BLM orders or regulations, such that the BLM's proposed rule—which deems gas ''avoidably lost'' in certain scenarios where an operator is otherwise complying with the regulations and is not negligent—is overbroad and in tension with the existing regulations.

There is no conflict between the BLM's existing regulations and the proposed rule or this final rule. The regulation at 43 CFR 3162.7–1(d) provides two distinct conditions for when royalties are owed, namely that operators must pay royalties on losses or waste resulting from negligence or from noncompliance with BLM regulations. This final rule defines avoidable waste and specifies when wasted gas is royalty bearing. Thus, it is not in conflict with § 3162.–1(d), rather it is the type of regulation contemplated and referenced by § 3162.7–1(d).

Paragraph 3162.7–1(d) does not define such royalty-bearing loss or waste as ''avoidable.'' Rather, it includes a separate requirement that operators must conduct operations in such a manner as to prevent avoidable loss.

In comparison, NTL–4A includes a broad definition of ''avoidable loss'' that has been in place for four decades and that the relevant commenters did not question, contradicting any suggestion that § 3162.7–1(d) conclusively defines what qualifies as avoidable loss of gas.

Unlike 43 CFR 3162.7–1(d), but like NTL–4A, the BLM's proposed rule and this final rule in § 3179.41 define when lost gas is ''avoidably lost'' or ''unavoidably lost'' and apply royalties to ''avoidably lost'' gas in § 3179.42. This final 3179 subpart provides that lost gas is royalty bearing if it is avoidably lost—that is, if the operator has not taken reasonable steps to avoid waste, has not complied with BLM directives, and the gas is coming from sources other than those listed in § 3179.42(b), it is royalty bearing. These final regulations better define the conditions for when gas is royalty free and when it is royalty bearing. The BLM has, however, eliminated the ''negligence'' component of the definitions for ''avoidably lost'' and ''unavoidably lost,'' since the definitions already require reasonable measures to prevent waste, *i.e.,* a higher bar than negligence. Particularly in light of this change, there is no tension between the BLM's existing regulations and those finalized in this rule.

Section 3179.42 When Lost Production Is Subject to Royalty

Proposed § 3179.5 is redesignated § 3179.42 in the final rule. The BLM received several comments on this section, none of which directly objected to the two statements made in this section. The section states that royalty is due on all avoidably lost oil or gas and royalty is not due on any unavoidably lost oil or gas. For example, commenters objected to the use of the terms ''avoidable'' and ''unavoidable'' elsewhere in the subpart. As a further example, one commenter stated the BLM should acknowledge that raw associated gas cannot be marketed, explaining that, in the commenter's view, ''[i]t is improper to assess royalties on flared gas because that gas cannot make it to market and has no value.'' The commenter appears to argue that when an operator chooses to flare gas, that gas has no value to the public. The BLM disagrees. When an operator makes the business decision to prioritize oil production over gas capture and sale, that operator has necessarily chosen to deprive the public or the Indian lessor of return for that gas. In all events, this comment addresses concepts addressed elsewhere in the regulatory language and preamble. No commenter disagreed that an avoidable loss has a royalty obligation and an unavoidable loss has no royalty obligation. For this reason, the BLM did not change this section.

Section 3179.43 Data Submission and Notification Requirements

This is a new section that did not appear in the proposed rule, but merely contains three tables that reference

[142] 30 U.S.C. 1727.

requirements that appear elsewhere in the regulations for the benefit of readers. All the requirements included in these tables were available for public comment, even though the tables themselves did not appear in the proposed rule. The BLM includes this section for both BLM inspectors and oil and gas operators as a quick reference to Sundry Notice requirements, information that is required at the request of the AO, and information requirements for the LDAR program. The section creates no new obligations on operators that are not already required in other regulations; it is provided for convenience. The summaries of the requirements, as provided in the table, impose no obligation on operators or on the BLM: all rights and obligations appear in the corresponding section of code.

For example, Table 1 to paragraph (a) informs an operator or a BLM inspector that subpart 3179 contains seven Sundry-Notice requirements. Each Sundry-Notice requirement is briefly summarized in the left-hand column with the section number of the specific Sundry-Notice requirement appearing in the right-hand column. If a reader wants further information on the Sundry-Notice requirements, then the reader may go to the referenced sections to understand the requirement more fully within the context of the section. Table 1 has a Sundry-Notice requirement of ''Delay of leak repair beyond 30 calendar days with good cause'' with a corresponding cross reference to § 3179.101. The reader may go to § 3179.101(a) to learn the full requirement and conclude that § 3179.101(a) requires operators to repair leaks as soon as practicable, and in no event longer than 30 calendar days after discovery unless the operator has good cause for the delay. Further reading shows that § 3179.101(b) requires an operator to submit a Sundry Notice informing the BLM of the good cause creating the delay in repair beyond 30 calendar days. The table provides a quick guide to a requirement and provides the corresponding regulatory reference.

The tables are intended to list all the requirements in the subpart or a section, but they are not intended to provide a comprehensive understanding of the full requirements. The tables are meant to serve as a summarized, quick reference to aid the reader. While this is a new section in the final rule, everything contained within the tables was subject to public comment in the proposed rule. The tables simply summarize final rule requirements. In the event of any conflict, the language of the final rule requirements prevails over the summaries in the table.

Section 3179.50 Safety

Proposed § 3179.6 is redesignated § 3179.50 in the final rule. The section remains largely the same as in the proposed rule. The BLM received a number of comments on the use of the term ''automatic ignition system'' and on the proposed immediate assessment of $1,000 per violation imposed on operators upon the discovery of a flare that is not lit. Industry commenters expressed the view that the definition for an ''automatic ignition system'' did not allow for various types of equipment to ensure that flares are properly lit when natural gas is present. The BLM intends for the term ''automatic ignition system'' to require operators to maintain an ignition source without specifying a particular type of device, with the goal that operators will use devices that are appropriate under the circumstances. The purpose of flaring is to combust the gas immediately with no venting from the flare apparatus, and that is the function and requirement of the automatic ignition system.

One commenter interpreted this section to mean that the BLM would prohibit venting of associated gas. The commenter further stated that, in certain circumstances, a ''no venting'' standard is impossible to meet. The BLM agrees with the commenter, and, for this reason, the BLM continues to include a list of exceptions for which flaring is not possible and venting is anticipated at final § 3179.50(a)(1) through (8). The commenter requested the addition of a de minimis exception in the final rule on the grounds that flaring is occasionally technically or economically infeasible. The proposed and final sections already include an exception for technical infeasibility, in addition to several other exceptions for small amounts of gas, and the commenter did not explain why a general ''de minimis'' exception would cover scenarios not already embraced by the final text. The BLM did not make any changes to this section in the final rule based on that commenter's suggestions. Royalty-free flaring under this provision is limited, as indicated in final § 3179.83, discussed below.

Some commenters contended that the BLM would exceed its statutory authority if it imposed an immediate assessment of $1,000 per violation for unlit flares. Commenters cited the *Wyoming* court's decision [143] that concluded, for waste minimization and resource conservation purposes, that there is no difference between eliminating excess methane by venting or by flaring. But that is not true for royalties; routing the gas through metered flaring equipment is essential for royalty measurement.

Furthermore, as the BLM stated in the proposed rule, consistent with the MLA's requirement that leases contain provisions for the ''safeguarding of the public welfare'' and for the ''safety and welfare of the miners,'' combusting gas rather than venting it into the surrounding air is safer *for operations* due to the gas's explosiveness and the risk to workers from hypoxia and exposure to various associated pollutants.[144] Furthermore, the BLM has an obligation to protect local public health and safety in connection with its oil and gas leases.[145] Based on the 2019 ONRR production data, 3 percent of the flaring locations are flaring more than 30,000 Mcf per month over the averaging period. Allowing volumes of this magnitude to be vented because of failures of flaring equipment would be a public health and safety threat.[146]

The BLM also notes, again, that the preference for flaring over venting is well established in oilfield operations. USGS's implementing guidance for NTL–4A states that, ''[b]ecause of safety requirements, gas which cannot be beneficially used or sold *must normally be flared, not vented*.'' [147]

Furthermore, the BLM in the final rule has limited the scope of this section to apply only to operations and production equipment located on a Federal or Indian surface estate. The requirements in the final § 3179.50 do not apply to operations and production equipment on State or private tracts, even where those tracts are committed to a federally approved unit or CA.

In response to comments, the BLM changed the text of final § 3179.50(a)(4) by replacing the term ''storage vessel'' with ''oil storage tank'' and removing the reference to the requirement for vapor recovery equipment in proposed § 3179.203, which has been removed

[143] *Wyoming* v. *U.S. Dep't of the Interior,* 493 F. Supp. 3d at 1068.

[144] ''Health and Safety Risks for Workers Involved in Manual Tank Gauging and Sampling at Oil and Gas Extraction Sites,'' February 2016, available at *https://www.osha.gov/sites/default/files/publications/OSHA3843.pdf.*

[145] 43 CFR 3162.5–3, 3163.1(a)(3).

[146] *See* ''Flammability of methane, propane, and hydrogen gases,'' May 2000, available at *https://www.cdc.gov/niosh/mining/UserFiles/works/pdfs/fompa.pdf* and ''Toward an Understanding of the Environmental and Public Health Impacts of Unconventional Natural Gas Development: A Categorical Assessment of the Peer-Reviewed Scientific Literature, 2009–2015,'' April 2016, available at *https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0154164.*

[147] CDM, 644.5.3G (June 1980) (emphasis added).

from the final rule. Also, the BLM amended regulatory text in final § 3179.50(b) to state that flares or combustion devices must be equipped with either an automatic ignition system or an on-demand ignition system. Paragraph (b) has changed slightly from an immediate assessment for ''discovery of a flare that is not lit'' to state that, upon discovery of a flare that is venting instead of combusting gas, the BLM may issue the operator an immediate assessment of $1,000 per violation. The BLM changed the language to underscore that the type of automatic ignition system is irrelevant, and the expectation is that gas of sufficient volume and quality must be flared. The immediate assessment for a flare that is venting gas instead of combusting gas remains fundamentally the same as the proposed rule and no changes were made based on comments received.

Section 3179.60 Gas-Well Gas

The BLM redesignated this section from § 3179.7 in the proposed rule to § 3179.60 in the final rule. The BLM did not receive any substantive comments related to this section. The comments received for this section more directly relate to the BLM's definition of a gas well. These comments are addressed in the discussion of § 3179.10 of this preamble. The BLM did not make any changes to the regulatory text other than updating a referenced citation to the final section number.

Section 3179.70 Oil-Well Gas

Proposed § 3179.8 is redesignated § 3179.70 in the final rule. This section covers the limit beyond which oil-well gas will be considered an avoidable loss with a royalty obligation when gas is flared due to pipeline capacity constraints, midstream processing failures, or similar events. The proposed rule included a volumetric limit of 1,050 Mcf per month per lease, unit PA, or CA. The BLM received numerous comments explaining why a volumetric limit of this kind is inappropriate. The BLM administers many leases that contain a single producing well and many units that contain hundreds of producing wells. Under the proposed rule, a single-well lease and a multi-well unit would have been subject to the same 1,050 Mcf per month volumetric limit.

The BLM agrees that the volumetric limit of 1,050 Mcf per lease, unit PA, or CA per month is unfair due to the varying number of wells in a lease, unit PA, or CA, and has discarded that particular limit, replacing it with a per-barrel volumetric limit. The BLM's objective in this rulemaking is to create a practical, royalty-based approach to waste prevention from oil wells that removes the need for an inefficient case-by-case determination of an avoidable/unavoidable loss for gas flaring and allows for some unavoidable flaring, capped by a practical limit.

Achieving this goal is not straightforward, and the BLM considered and ultimately declined to adopt certain alternate thresholds proposed by commenters, such as a time-based limit to flaring.[148] In North Dakota, the BLM encountered significant obstacles when implementing the emergency provision from NTL–4A Section III.A. allowing operators to flare royalty-free for ''24 hours per incident and to 144 hours cumulative for the lease during any calendar month.'' From that experience, the BLM learned that the time-limit approach is difficult to enforce, and operators learned that they are ill-prepared to provide flaring volumes based on time: operators do not maintain hourly production data that could be used for NTL–4A emergency determinations, nor will the measurement regulations provided for in this final rule obligate such hourly measurements for all operators. From experience, therefore, the BLM decided against adopting a time-based approach in the final rule.

The BLM also considered and rejected commenters' suggestion that the BLM require operators to capture certain percentages of their oil-well gas. Instead, this final rule requires operators to submit either a waste-minimization plan or a self-certification committing the operator to capture 100 percent of the gas. In addition, insofar as this rule flows from lessees' obligation to compensate the United States or Indian mineral owners for their resources, the BLM's application of royalties to avoidably lost gas ensures that the Federal taxpayer or Indian lessor is compensated in the same manner as if the gas were captured and sold. The royalty approach aligns with Congress' instruction in the IRA. It also aligns with the BLM's historical practice of curbing waste through royalties, not capture percentages, and (in the context of the production rate limits for oil well gas) with the demonstrated capacity of industry to conserve Federal gas. And consistent with this rule's efforts to streamline BLM enforcement and supervision (by, *e.g.,* limiting the need for Sundry Notices), it forgoes a not insignificant burden on both operators and the BLM. For example, forgoing capture percentages obviates the need for the BLM to make case-by-case determinations to avoid premature shut-ins, as in the 2016 Rule's provision for applications for exceptions to the capture requirements. Although the BLM does not here disclaim the authority to impose capture limits on Federal gas, the BLM's objective in this rule does not necessitate such percentages.

The flaring thresholds in the final rule begin at 0.08 Mcf of gas per barrel of oil produced in the first year of the rule, 0.07 Mcf per barrel produced in the second year of the rule, 0.06 Mcf per barrel produced in the third year, and 0.05 Mcf per barrel produced afterwards. The BLM selected the initial limit—0.08 Mcf per barrel of oil produced—because it is the average amount of gas flared per barrel of oil produced in 1990 to 2000. Since the 1990s, the industry has witnessed considerable technological advances in directional drilling, hydraulic fracturing, and well completions, but has failed to adhere to the level of conservation the industry has *already* demonstrated it can achieve. Advances have been made in the use of skid-mounted equipment for the extraction of natural gas liquids on-lease, equipment for compressed natural gas on-lease, and on-lease power generation and these advances may not be fully used in the field. Operators also have available to them older methods for using the gas, such as reinjection for enhanced oil recovery, reservoir pressure maintenance, or simply safe disposal. The failure to fully implement new and old techniques to manage gas that is currently wasted is particularly glaring given the inclusion of standardized natural gas contracts with delivery at Henry Hub in the New York Mercantile Exchange (NYMEX) in 1990. Including natural gas on the New York exchange provided important pricing information for the industry and facilitated broader marketing for natural gas as a commodity even though the price of gas fluctuates with the market. Notwithstanding a national market for pricing since 1990, Federal lessees have wasted *more* of the public's gas as a function of oil production. *Cf., Cal. Co.* v. *Udall,* 296 F.2d 384, 388 (D.C. Cir. 1961). For example, when the BLM evaluated the 2019 operator-reported production for agreements reporting oil production and flaring data, the average agreement produced 11,850 barrels of oil per month and flared 4,500 Mcf of associated gas per month or an average flaring rate of 0.38 Mcf per barrel of oil produced.

[148] *See Marathon Oil Co.* v. *Andrus,* 452 F. Supp. 548, 553 (D. Wyo. 1978).

The BLM determined that the starting threshold of 0.08 Mcf per barrel of oil produced would impact the approximately 62 percent of flaring locations responsible for approximately 96 percent of the reported flaring, based on 2019 production data. The 0.08 Mcf per barrel of oil produced is comparable to the proposed 1,050 Mcf per lease, unit PA, or CA in that the final threshold of 0.08 Mcf per barrel addresses about 96 percent of the reported flaring. Thus, the proposed and final rule limits target only those locations generating the majority of the flaring, but, unlike in the proposed rule, would not apply inequitably across unit agreements, PAs, and CAs. The BLM estimates that the proposed limit of 0.08 Mcf per barrel of oil produced would make 88 percent of the flared volumes royalty-bearing and generate approximately $57.7 million in royalty revenue for the first year. The 0.05 Mcf per barrel of oil produced threshold, in the BLM's estimate, would make about 92 percent of the flared volumes royalty-bearing, based on the 2019 production data.

The proposed rule included a flaring threshold of 1,050 Mcf per lease, unit PA, or CA per month that would have gone into effect 60 days after publication of the final rule. For the final rule, the BLM elected to use a phased-in timeline because of the changed metric, with an initial threshold similar in magnitude to recently reported flaring. A number of States have implemented a phased-in gas capture percentage that allows operators to plan operations and budgets to meet the capture requirements. The BLM provides a similar opportunity for operators to plan for thresholds decreasing from 0.08 Mcf to 0.05 Mcf over 4 years. Also, a 4-year phase-in for the threshold allows for further advances in technology that may assist in lowering waste. When BLM changed to the Mcf per barrel of oil produced flaring limit from the 1,050 Mcf per lease, unit PA, or CA limit, the projected aggregate flared volume beyond the limit increased and, therefore, projected royalties increased.

Commenters also stated that regardless of the flaring threshold, the BLM must include provisions permitting operators to submit a request for approval to flare above the established threshold, and that the threshold establishes an improper per se avoidable loss. The BLM disagrees. The ability for operators to request approval to flare above the established threshold defeats the purpose of a threshold and returns the BLM and operator to an unworkable case-by-case analysis.

Commenters suggested a 24-hour time limit as an alternative to the volumetric threshold that the BLM had in the proposed rule. The BLM disagrees, and the commenters failed to explain how a time-based limit would not also result in what the commenters alleged was an improperly rigid, per se avoidable loss threshold associated with a volumetric limit. The BLM has established the volumetric flaring threshold based on oil production to allow for some avoidable oil-well loss flaring while simultaneously eliminating the time-consuming and administratively costly case-by-case determinations required under NTL–4A.

The State of North Dakota has taken issue with the BLM's proposal to use monthly volume limits. The North Dakota Industrial Commission contends that the BLM should use the ''average percentage of gas captured to ensure economic viability, better manage unconventional resources, and minimize conflict with North Dakota's flaring regulations.'' The BLM has elected not to use a monthly volume limit or a gas capture percentage to determine waste due to the aforementioned inequities associated with varying numbers of wells in a lease, unit PA, or CA; the difficulties implementing a gas capture percentage nationwide; and the concern for not fulfilling the BLM's Indian trust obligation.

States such as North Dakota and New Mexico have implemented a phased-in gas capture percentage. The final rule's limits based on percentages of gas flared per barrel of oil, however, are a better means to manage and understand waste by directly linking oil production with flared gas.

Wyoming comments that in 2021, operators only flared or vented 0.18 percent of all gas that was produced in the State. And North Dakota comments that ''its regulations resulted in gas capture rates increasing from 64 percent in 2014 to total capture of 95 percent in 2022 even with all [of North Dakota's] approved variances includ''d.'' The BLM lauds both States for their advances in lowering flaring, and their achievements will likely reduce any additional burdens on operators in those States from the final rule. However, according to EIA data from 2017 through 2022, North Dakota accounted for approximately 33 percent of the volume of gas flared nationwide while producing 11 percent of the volume of oil produced nationwide. Wyoming accounted for approximately 11 percent of the average total flared gas onshore nationwide and 2 percent of the oil produced nationwide. State efforts to reduce venting and flaring, though important, do not displace the Secretary's duty to prevent undue waste from Federal and Indian wells nationwide.[149] The BLM has written a rule that will compensate the taxpayer or the Indian mineral owner for the waste of flared gas when the operator chooses to maximize oil production regardless of the associated gas disposition.

Some commenters stated that a fixed threshold for avoidable loss wrongly fails to account for situations ''beyond the control of the operator.'' The largest sources of flared gas associated with BLM leases are unconventional oil reservoirs in North Dakota and New Mexico, where pipeline capacity issues have been cited as reasons for extreme flaring. The BLM has concluded that, particularly in these cases, the rate of oil production and its associated gas production is fully within the control of the operator: the BLM is well aware, for example, that operators have shut in production (whether oil or gas) when commodity pricing is low and have begun producing again when the price rises. The BLM's threshold simply applies the operators' logic in these circumstances to the BLM's interest, as lessor or trustee, in conservation of a public or Indian resource. For this reason, the threshold for an avoidable loss in the final rule is directly tied to the oil production rate—*i.e.,* a factor within the operators' control.

The BLM received comments stating that the flaring thresholds throughout the rule are arbitrary and unfounded, particularly in proposed § 3179.8. One commenter claimed that the BLM had failed to identify and make available for review the information used to determine the flaring limits. On the contrary, the BLM clearly noted in the proposed rule preamble that it relied on production data that operators reported to ONRR from 2015 through 2019 to derive flaring thresholds.[150] These data are available to the public online at the U.S. Department of the Interior Natural Resources Revenue Data website, *https://revenuedata.doi.gov/query-data.*

The BLM elected to use 2019 production data, even though later production data were available, in recognition of the lower (*i.e.,* unrepresentative) production in 2020 and 2021 during COVID–19. When the BLM prepared the proposed rule, 2022 production data were not available. The 2022 production data is now available.

[149] *https://www.eia.gov/dnav/ng/ng_prod_sum_a_EPG0_VGV_mmcf_a.htm, https://www.eia.gov/dnav/pet/pet_crd_crpdn_adc_mbbl_a.htm.*

[150] 87 FR 73590, 73603 (Nov. 30, 2022).

The BLM has now reviewed the 2022 data with a flaring rate of 0.11 Mcf of gas flared per barrel of oil produced. Accordingly, the BLM has not altered its approach to flaring limits based on the updated data.

Another commenter wrote, the ''BLM's proposed limits in this Section are much too low, constituting in some instances mere minutes of flaring.'' This comment is inconsistent with the publicly available ONRR data, which indicates that the highest reported flared volumes for any month in 2019 were 662 Mcf per hour or 11 Mcf per minute. If operators are flaring 1,050 Mcf in minutes, they are failing to report this level of flared volumes on their Oil and Gas Operations Reports (OGOR) to ONRR. The BLM did not change the flaring limit based on this comment.

One commenter objected to the proposed thresholds because, according to the commenter, the most significant reason why new production outpaces infrastructure capacity is the time-consuming process of obtaining the necessary pipeline rights-of-way from the BLM. The commenter outlined the required steps and associated time to obtain approval to construct a pipeline across Federal and Indian land but did not include the time necessary to obtain necessary approvals to cross State and private land. According to the commenter, the process ordinarily takes 47 weeks. The commenter asserted that operators have no choice but to flare associated gas or shut in the wells given the time necessary to obtain the rights-of way from the BLM. In effect, the commenter asserted that the BLM is responsible for the flaring of associated gas because obtaining rights-of-way from the BLM is a lengthy process.

Since the rights-of-way process is well understood—as reflected in the comment—operators necessarily make a business decision to accelerate oil production while flaring associated gas due to capacity constraints. Conversely, an operator could begin to plan for the process for obtaining rights-of-way prior to drilling the wells—particularly because many operators plan drilling 5 years into the future—or, alternatively, leave wells shut in until the pipeline rights-of-way is approved. As the BLM notes above, operators routinely make business decisions that are advantageous to their self-interest by electing to shut in wells when the price of oil is low, and, when the price of oil is high, operators act on their self-interest as well by increasing oil production. In this final rule, the BLM is merely applying the same logic to the public's interest in the conservation of resources and intends for the flaring limitations to encourage operators to plan ahead for natural gas conservation before they drill wells or postpone production until there is adequate pipeline capacity, thereby reducing the waste of Federal natural gas resources. We note that the BLM approves rights of way for pipelines only where BLM manages the surface estate, which is important for some but not all oil and gas operations.

In any event, as of January 2024, there are 4,237 approved APDs in New Mexico, 1,948 in Wyoming, and 333 in North Dakota. Simultaneously, the BLM currently has only 314 pending rights-of-way applications for oil or gas pipelines in New Mexico, 29 in Wyoming, and none in North Dakota. This disparity between APDs and rights-of-way applications illustrates that operators appear uninterested in obtaining the necessary rights-of-way to accommodate the need for greater pipeline capacity. These pending rights-of-way applications may be factors relating to some of the volume of flared associated gas that operators have reported for the past year, but could have been addressed by earlier planning for those rights-of-way before drilling begins. As demonstrated by the comment, operators are aware of the process and timeline for BLM approval of rights-of-way.

The BLM also received comments on the proposed provision in § 3179.8(b) that would have allowed the BLM to exercise its discretion to order the operator to curtail or shut in production as necessary to avoid unreasonable and undue waste of Federal or Indian gas after confirming that an operator's flaring is exceeding 4,000 Mcf of gas for 3 consecutive months. The BLM has revised the flaring threshold in the final § 3179.70(b) to allow 1 Mcf of gas per barrel of oil produced per month for 3 consecutive months with confirmation that the flaring is ongoing. The BLM arrived at this figure by targeting the 3 percent of reporting units with roughly 16 percent of flaring—as it had in the proposed rule—and simply adjusted the threshold to correspond to a rate of production as in paragraph (a).

One commenter criticized the structure of proposed § 3179.8 for eliding any inquiry into whether the lessee is acting reasonably and prudently in light of the operator's actual economic circumstances. The commenter stated further that flaring is not automatically ''waste.'' The BLM agrees that flaring is not automatically waste, an understanding reflected in the proposed and final rules' distinctions between avoidable and unavoidable loss and associated flaring thresholds. The BLM uses the unavoidable loss threshold to allow operators to respond to operational considerations and manage both oil production and associated gas flaring throughout the month to stay below the unavoidable loss threshold: operators are capable of curtailing oil production or shutting in oil wells to lessen or stop the flaring of associated gas. And as set forth elsewhere in this rule, nothing in the MLA requires that the BLM evaluate the feasibility of flaring on a case-by-case basis or without regard to the United States' interest in conserving the mineral estate.

One commenter went further and provided an example of the economic value of shutting in a well for flaring in excess of 4,000 Mcf per month, the threshold from proposed § 3179.8(b), at a hypothetical value of $3 per Mcf, which, at a minimum, would yield a gross income of $12,000 for the gas and an associated Federal royalty income of $1,500. This commenter continued that, in its view, the BLM failed to explain ''how it is negligent and imprudent for an operator to flare that minimal value of gas in lieu of shutting in production from a CA that in the same month would produce tens of thousands, if not hundreds of thousands of dollars, worth of oil.''

The BLM does not find the commenters to be persuasive. The revenue from oil in the proposed example is not lost unless the well is abandoned—otherwise the operator can simply resume operations later. The BLM has reasonably concluded that it would prefer to reap royalties, for the benefit of the American taxpayers or Indian mineral owners, from *both* oil production and otherwise wasted gas. The commenter did not provide any specific data that, in such circumstances, the well would be abandoned. Indeed, the example ultimately buttresses the BLM's conclusion that the royalties the BLM seeks to obtain are in many cases small relative to the overall value of oil and the associated profit accruing to the operator, such that, absent the final rule, an operator may decide to prioritize its short-term profits over longer-term resource recovery.

This final rule section on oil-well gas applies to all onshore Federal and Indian oil and gas leases, unit PAs, and CAs and this section requires operators to flare (not vent) gas due to pipeline capacity constraints, midstream procession failures, or other similar events that prevent produced gas from being transported through the connected pipeline. The BLM has received comments characterizing the Wyoming

court decision as explaining that it does not matter if gas is vented or flared. The BLM agrees with the relevant passage of the court's opinion, which indicates that, as a matter of volumes of gas wasted, it is immaterial whether the gas is vented or flared. But—independent of the court's discussion regarding volumes of potentially wasted gas—flaring provides benefits to the BLM's waste management mandate, namely accuracy in the measurement of wasted gas. Oil-well gas with flared volumes greater than 1,050 Mcf per month over the averaging period requires accurate measurement for purposes of calculating the royalty obligation. The measurement of vented gas through a flare line does not meet the BLM's expectation for measurement accuracy when there is a royalty obligation. There are no industry standards for measurement of vented gas and no current industry understanding of measurement accuracy of vented gas. Therefore, the operator is expected to flare and measure the flare volume pursuant to final § 3179.71, as set forth below.

Section 3179.71 Measurement of Flared Oil-Well Gas Volume

The BLM has restructured proposed § 3179.9, which was entitled, ''Measuring and reporting volumes of gas vented and flared,'' by breaking it up into two sections in the final rule: § 3179.71, entitled, ''Measurement of flared oil-well gas volume,'' and § 3179.72, entitled ''Reporting and recordkeeping of vented and flared gas volumes.'' The BLM made this change for ease of use for both the regulated community and BLM inspectors.

One commenter suggested a method for determining the flaring threshold limit at commingled facilities. From this comment, the BLM recognized that it had not included explicit regulatory text allowing for the commingling of flared gas from multiple leases, unit PAs, and CAs in the proposed rule. The BLM has rectified this omission by including in the final rule the ability for operators to commingle flared gas without BLM approval in final § 3179.71(a). Proposed paragraph (d) would have allowed operators to use an allocation method approved by the BLM to allocate production from a commingled flare. The BLM recognizes the benefit for operators and the BLM to allow flaring from more than one lease, unit PA, or CA in a common high-pressure flare. Final § 3179.71(a) explicitly allows for the commingling of flared gas from more than one lease, unit PA, or CA to a common flare without BLM approval and provides the allocation method for commingled flares in final paragraph (h). The BLM requires a standard allocation methodology for commingled flared gas based on oil production. The BLM also included a requirement in this section for operators to indicate on the site facility diagram that the high-pressure flare is a common, commingled flare, and to list the leases, unit PAs, or CAs contributing gas to the common flare. Indicating that flares are commingled on the site facility diagram ensures that BLM inspectors have accurate information when conducting production inspections.

In the proposed rule, the BLM would have required operators to measure using an orifice meter at all high-pressure flares flaring 1,050 Mcf per month or more within 6 months after the effective date of the final rule. For flared gas measured with an orifice meter, the proposed rule also would have required the following: (1) orifice plate inspections once a year; (2) meter verification once a year; (3) gas sampling with a C6+ analysis once a year; (4) flare gas sample taken from: the flare meter location, the gas FMP when the flare and FMP gas are the same quality, or another location approved by the BLM; (5) measurement uncertainty within ± 5 percent; (6) radiant heat considerations for flare placement; and (7) high-pressure flares that met the measurement requirements for a low-volume FMP under subpart 3175. Many of these requirements that appeared in the proposed section were taken directly from the industry standard, API MPMS Chapter 14, Natural Gas Fluids Measurement, Section 10, Measurement of Flow to Flares, Second edition, December 2021.

The BLM evaluated these requirements based on comments and decided to instead require operators in the final rule to use an orifice metering system with the low-volume measurement requirements found in § 3175.80, the low-volume electronic gas measurement system requirements found in § 3175.100, and the low-volume gas sampling requirements found in § 3175.110, with the gas sampling location requirements provided in final § 3179.71(d) or (e). These changes make the accuracy of an orifice metering system used at a flare consistent with that of a low-volume gas FMP. Based on measurement data received from a commenter, the BLM agrees with the data analysis and believes that flare measurement is unlikely to meet the ±5 percent uncertainty requirement. The commenter provided analysis of annual field data from an orifice measurement flare system and a linear meter flare system showing that the overall uncertainty of the orifice meter is 6.32 percent and the linear meter is 3.22 percent. Requiring a flare meter to meet the FMP requirements for a low-volume gas FMP removes the need to meet the ±5 percent uncertainty level. For this reason, the BLM removed the measurement uncertainty requirement in the final rule. The requirement for the consideration for radiant heat for flare installation has been moved to final § 3179.71(c)(3).

One commenter requested that the BLM require flare measurement at all locations flaring associated gas because the commenter believes industry grossly underestimates flared volumes reported to ONRR. The BLM considered this approach but abandoned it because requiring measurement at all flares places an unnecessary economic burden on small operators who rarely have routine flaring due to pipeline capacity issues. While the BLM understands this threshold is based on data that may underestimate the scope of the problem, the BLM has concluded that requiring measurement on flared volumes less than 1,050 Mcf per month over the averaging period would encompass flaring operations that would meet the BLM's emergency criteria and that are outside the BLM's objective for this section, which is to measure more frequent gas flaring. The BLM did not change the high-pressure flare measurement requirement threshold based on this comment.

Other commenters requested the BLM to return to the NTL–4A standard of estimation and eliminate the requirement to measure gas-flaring volumes, relying instead on flared-volume estimation based on site-specific information, such as GORs, sales gas volumes metered for allocations, and gas sample analysis. One commenter provided a study indicating that inefficient and unlit flares account for five times more methane emissions than was previously estimated across the three basins responsible for more than 80 percent of U.S. flaring.[151] The study's evidence that industry underestimates the amount of methane lost from flares supports the final rule requirement to measure high-pressure flares with volumes greater than or equal to 1,050 Mcf per month over the averaging period.

The BLM received numerous comments requesting the BLM expand the types of flare measurement systems that can be used from orifice metering

[151] Genevieve Plant et al., ''Inefficient and Unlit Natural Gas Flares Both Emit Large Quantities of Methane,'' *Science,* vol. 377, pp. 1566 (2022), *https://www.science.org/doi/10.1126/science.abq0385.*

only to other systems that are covered under API MPMS Chapter 14.10 Natural Gas Fluids Measurement—Measurement of Flow to Flares, December 2021. The BLM did not incorporate this API standard into the final rule because it includes meters that the BLM does not regulate in its gas measurement rules found in subpart 3175. Since royalties will be owed at most flares that require measurement, the BLM is requiring almost the same level of accountability for flaring measurement as would be required for production royalty measurement. The BLM elected to expand the list acceptable meters in subpart 3175 to include ultrasonic meters because the BLM anticipates allowing for the use of ultrasonic meters when it updates subpart 3175, but none of the other meters in API 14.10.

The BLM did not include the use of thermal flow or thermal mass meters for several reasons. First, thermal mass meters are dependent on gas properties, which are variable with natural gas in a flare line. Second, open-loop calibration (as in a flare system), with a thermal mass meter is only recommended using air. Any other application environment will be inferred indirectly and introduce uncertainty or less accurate measurement. Finally, no party submitted any measurement data to demonstrate the acceptable performance of a thermal mass meter for flare use. For these reasons, the BLM has expanded the final rule to include orifice measurement systems and ultrasonic measurement systems.

Comments highlighted safety concerns related to the use of orifice meters on flares and the difficulty in obtaining accurate measurement, given that flow to a flare is intermittent with rates varying considerably at a single meter. The BLM agrees with both the safety and measurement accuracy concerns and changed this section in the final rule to allow both orifice metering and ultrasonic meters. In addition, based on commenters' concerns for safety with the orifice metering system, the BLM included a new provision in § 3179.71(c)(3) that requires operators to evaluate the production facility to determine which type of flare measurement is safe for the facility.

In the final rule, orifice metering systems must comply with the low-volume measurement requirements in § 3175.80, low-volume electronic gas measurement requirements in § 3175.100, and the low-volume gas sampling and analysis requirements in § 3175.110, with the exception for gas sampling requirements in the final rule at § 3179.71(d) or (e). Under the new provisions in § 3179.71(c)(2), ultrasonic measurement systems must comply with three requirements. First, each ultrasonic meter make and model must be tested for flare use. Ultrasonic meter testing must be conducted and reported pursuant to API MPMS Chapter 22.3, Testing Protocol for Flare Gas Metering, First Edition, August 2015 (''API 22.3'') and the test report must be available to the AO upon request. Second, ultrasonic meters must be installed and operated for flare use according to the manufacturer's specifications and those specifications must be provided to the AO upon request. Third, ultrasonic metering systems must comply with the low-volume electronic gas measurement requirements in § 3175.100, and low-volume gas sampling analysis requirements in § 3175.110 with the exception for the gas sampling requirements in § 3179.71(d) or (e).

Two commenters expressed concern that the measurement system as required in the proposed rule could not meet the proposed uncertainty requirement of ±5 percent, even though the BLM used the industry standard value. Section 4.1 of API MPMS Chapter 14.10 Natural Gas Fluids Measurement—Measurement of Flow to Flares, December 2021 states, ''Targeted uncertainty for flare metering applications shall be ±5 percent of actual volumetric or mass flow rate, measured at 30 percent, 60 percent and 90 percent of the full scale for the flare meter or as defined by regulations or specific end user requirements.'' Based on a commenter's submission of an uncertainty analysis of an orifice meter used in a flare application, the BLM agrees that a ±5 percent uncertainty for the flare meters, particularly orifice meters, will be difficult to achieve. Therefore, the BLM has removed the measurement uncertainty requirement that was in proposed § 3179.9(b)(5) based on the comment.

The BLM did not receive any comments on its gas sampling requirements in the proposed rule. Since the BLM explicitly allows for commingling of flared gas without prior approval in the final rule, it became necessary to address gas sampling at a commingled and non-commingled flare. The final rule at § 3179.71(d) requires operators to take gas samples from either the flare meter location, the gas FMP location, or another location approved by the AO when measuring high-pressure flare volumes from a single lease, unit PA, or CA. When the gas sample is for a commingled high-pressure flare, the final rule at § 3179.71(e) requires that the gas sample be taken from either the flare meter location or another location approved by the AO. High-pressure flare heating value requirements are in the new § 3179.72 in the final rule.

The BLM received comments regarding a provision in proposed § 3179.9(b)(1) that provided a 6-month compliance timeline from the effective date of the rule for the measurement requirements. Industry commenters recommended a 1-year compliance deadline for all flare measurement. For the final rule, the BLM extended the timeline for compliance based on the flare flow category. The highest flare flow category (≥30,000 Mcf per month) compliance deadline remains at 6-months after the effective date of the rule. The mid-level flow category (<30,000 Mcf per month and ≥6,000 Mcf per month) for compliance with measurement and gas sampling requirement has been extended to 12 months after the effective date of the rule. The lowest flare flow category (<6,000 Mcf per month and ≥1,050 Mcf per month) for compliance has been extended to 18 months after the effective date of the rule. One reason for the tiered approach to the measurement compliance timeline is the concern for the risk to royalties based on the volumes flared. The shortest compliance timeline applies to flares producing the highest volumes. The BLM has extended the compliance timeline for lower flared volumes with a lower risk to royalty measurement.

The BLM also understands current supply chain difficulties and has taken those difficulties into consideration in extending the deadline for compliance with measurement requirements and any modifications required for gas sampling for flares based on the flare flow category. The BLM retained a 6-month compliance deadline in the final rule at § 3179.71(f) for measurement and sampling equipment for high-pressure flares measuring greater than or equal to 30,000 Mcf per month over the averaging period. Based on the 2019 ONRR production data, the BLM has concluded that this requirement will affect approximately 100 locations. Of those 100 locations, the BLM anticipates that many will already have measurement systems in place: operators flaring above 30,000 Mcf per month are likely to be interested in accurate measurements of the volume in order to make operational decisions. Moreover, such wells are capable of generating substantial revenue, allowing them to more easily overcome supply chain difficulties. In short, the 6-month deadline should not be difficult for those operators to meet.

The second flare flow category in the final rule has a deadline for compliance 12 months after the effective date of the rule and measures flare flow that is less than 30,000 Mcf per month over the averaging period and greater than or equal to 6,000 Mcf per month over the averaging period. Based on the 2019 ONRR production data used for this rulemaking, the BLM estimates that the 12-month deadline will affect approximately 228 locations. The BLM anticipates some, but not all, of these locations will already have measurement equipment in place that will require some updating based on the final rule flare measurement requirements. In the final rule, the BLM has also extended the timeline for flare measurement and gas sampling to be in compliance for flares measuring less than 6,000 Mcf per month and greater than or equal to 1,050 Mcf per month over the averaging period within 18-months of the effective date of the rule. The BLM estimates that approximately 575 locations will be required to comply with the measurement rules within 18 months of the effective date of the rule. Diligent operators should be able to be in compliance by that effective date.

Final § 3179.71(g) provides the method for estimating the flared volumes when the flared volume is less than or equal to 1,050 Mcf per month over the averaging period. The estimation method is based on the GOR_r calculated from the oil and gas volumes reported to ONRR for the previous 6 months. The total gas produced is the sum of the gas reported as sold or transferred to a gas plant, gas reported for on-lease use, and gas reported as vented or flared for the 6 months prior to the month in which the gas flared volume is estimated. The GOR_r is then multiplied by the total volume of oil produced from oil wells while flaring for the reporting month. The estimated gas volume flared (V_f) equals the GOR_r times the volume of oil produced while flaring (V_{op}) minus the total gas volume sold or transferred to a gas plant (V_s). This method for estimating the flared volume relies on volumes reported to ONRR that can be verified by the BLM without having to rely on production testing done by the operator. Final § 3179.71(g) replaces part of proposed § 3179.9(a) with a verifiable method for flare estimation.

The BLM did not receive any comments on the concepts of flare estimation or measurement per se. On review of the proposed rule, the BLM realized it did not include the ability for an operator to commingle flared gas from multiple sources even though it has been common practice for the BLM to allow this ability with approval. In the final rule, the BLM allows operators to commingle flared gas without prior BLM approval. Since commingling of flared gas does not require BLM approval, the BLM included a required allocation methodology to be used for the reporting of the flared gas to any lease, unit PA, or CA included in the commingled flare. When a flare is combusting gas that is combined from more than one lease, unit PA, or CA, final § 3179.71(h) provides the allocation methodology for reporting the allocated flared volume to ONRR. The allocation methodology is based on the ratio of the net standard volume of oil from one of the FMPs that is contributing flared gas to the commingled flare divided by the total net standard volume of oil from all the FMPs that have gas contributing to the flare times the total flared volume measured at the flare. The allocation is done for each lease, unit PA, or CA contributing gas to the flare. The flared volume for each lease, unit PA, or CA is reported on its respective OGOR. Final § 3179.71(h) replaces proposed § 3179.9(d) with a verifiable method of allocation from a commingled flare that follows typical industry practices for allocation.

Proposed § 3179.9(e) became § 3179.71(i) in the final rule. The BLM did not receive any comments on this provision. The measurement of flared volumes is not considered an FMP for the purpose of subpart 3175 even though some of the measurement requirements of subpart 3175 will apply to flare measurement. Flare measurement will require the use of an FMP number on the OGOR when and if there is a royalty obligation.

Section 3179.72 Required Reporting and Recordkeeping of Vented and Flared Gas Volumes

Final § 3179.72 is a new section that contains all the ONRR reporting requirements for avoidable and unavoidable losses and the recordkeeping requirements for vented and flared gas volumes. Section 3179.72 begins with paragraph (a), which requires operators to report all vented and flared volumes, both avoidable and unavoidable losses, pursuant to ONRR's *Minerals Production Reporter Handbook.* This paragraph remains unchanged from proposed § 3179.9(a) to final § 3179.72(a). The BLM did not receive any comments on this paragraph in the proposed rule.

In the final rule, the BLM allows operators to commingle flared gas without prior BLM approval. Gas royalty determination is based on two components: gas volumes and heating value. Final § 3179.72(b) requires operators to report the flared gas heating value based on the gas analysis requirement in § 3179.71(d) or (e). If flared gas is commingled, the operator must report the same heating value from the common flare on all the leases, unit PAs, or CAs contributing gas to the flare based on the gas sample analysis. The proposed rule had similar gas sampling analysis requirements but did not specifically state the requirement to use this heating analysis for reporting. The BLM has included this requirement to clarify the unstated expectation in the proposed rule.

Based on comments received, the final rule includes provisions for event and operational recordkeeping related to waste prevention. GAO reports (*e.g.* GAO 04–809) have also admonished the BLM that it should exercise better oversight in the documentation of waste.

In response to public and GAO comment, the BLM added paragraph (c) for recordkeeping of oil- or gas-well flaring events, emergency events, and manual downhole liquids unloading operations or well-purging operations in this final section. The requirements of final paragraph (c) apply 3 months after the effective date of the rule to give operators time to develop a system of recordkeeping that complies with the BLM's requirements. The BLM anticipates requesting the records required in paragraph (c) when conducting production audits or investigating excessive avoidable or unavoidable reported losses.

Section 3179.73 Prior Determinations Regarding Royalty-Free Flaring

In the final rule, the BLM redesignated proposed §§ 3179.10 to 3179.73. The provision allows previous decisions authorizing royalty-free flaring to continue for 6 months after this rule's effective date, after which time the BLM will determine the royalty-bearing status of all flaring based on the new subpart 3179 requirements. This change accords with lease terms, which expressly subject all leases to ''regulations hereafter promulgated when not inconsistent with lease rights granted or specific provisions of this lease.'' See BLM standard lease form 3100–011. We think a 6-month postponement of the effective date will foster a successful transition, potentially reducing or eliminating difficulties for both operators and the BLM. The BLM received two comments in support of including this provision in the final rule. One commenter from a State regulatory authority expressed concern

that some operators may not have budgeted for the necessary operational changes and sought additional time for compliance. No industry commenters, however, requested an extension of the 6-month provision. Nor did anyone object to the approach that the BLM is adopting in the final rule. The BLM did not make any changes to this section based on the comments received. The proposed and final sections contain the same requirements.

Flaring and Venting Gas During Drilling and Production Operations

Section 3179.80 Loss of Well Control While Drilling

Final § 3179.80 was redesignated from proposed § 3179.101 and retitled from ''Well drilling'' in the proposed rule to ''Loss of well control while drilling'' in the final rule. The language in the proposed and final sections remains largely the same, with one exception. For consistency with the IRA section 50263, the BLM now requires the operator to submit a Sundry Notice within 15 days following the conclusion of a loss-of-well-control event describing the loss of well control. From the details provided in the Sundry Notice and any other information available to or obtained by the BLM, the BLM will determine whether the loss of well control was due to operator negligence. If the BLM determines the loss of well control was due to operator negligence, then the oil or gas lost is determined to be an avoidable loss with a royalty obligation. The BLM will notify the operator in writing as to whether such loss will qualify as an avoidable loss.

One commenter on this section suggested that the BLM assess ''royalties on all gas that is vented during well drilling unless venting is required due to safety reasons or because flaring or capture is infeasible.'' The BLM has concluded that the Sundry Notice requirement in the final rule—and the respective royalty obligation—meets the commenter's objective. In the BLM's experience, operators work to avoid loss of well control while drilling and prepare in advance should a loss of well control occur. Therefore, the BLM considers the likelihood of negligence during the loss of well control to be very low and adequately canvassed.

The BLM received another comment requesting that the BLM provide clarification on the process it will use to make an avoidable-loss determination, and whether and how an operator may appeal a BLM decision of an avoidable loss. In response to part of this comment, the final rule requires an operator to notify the BLM within 24 hours of the start of a loss of well control event and to submit a Sundry Notice containing relevant details of the loss of circulation to determine if the loss is an avoidable or unavoidable loss. The BLM believes this process is consistent with that in the Notice to Lessees and Operators of Onshore Federal and Indian Oil and Gas Leases Reporting of Undesirable Events (NTL–3A). The BLM already has an appeal process in place that will cover any BLM decision in this section, see §§ 3165.3 and 3165.4.

Section 3179.81 Well Completion and Recompletion Flaring Allowances

In response to comments, the BLM reorganized, redesignated, and consolidated concepts from proposed §§ 3179.102, 3179.103, and 3179.104 into only two final sections, §§ 3179.81 and 3179.82. Proposed § 3179.103, which was entitled, ''Initial production testing,'' has been redesignated as final § 3179.81 and is now entitled, ''Well completion or recompletion flaring allowances.'' Comments reflected some confusion about the BLM's intent in proposed § 3179.102, ''Well completion and related operations,'' and § 3179.103, ''Initial production testing.'' The comments' core question is whether the BLM views the period of flowback following fracturing or refracturing as the same or different from initial production testing. In response to those comments, the BLM eliminated the concept of initial production testing and will regulate flaring following well completion or recompletion as a separate period in the lifecycle of a newly producing formation in a well.

Final § 3179.81, ''Well completion or recompletion flaring allowances,'' provides for flaring royalty-free under §§ 3179.41(b)(2) and 3179.42(b) until one of the following events occurs: (1) 30 days have passed since the beginning of the flowback following completion or recompletion, except where an extension has been granted under paragraph (b) for flowback delays caused by well or equipment problems, or under paragraph (d) for dewatering and initial evaluation of an exploratory coalbed methane well for up to two possible 90-day extensions; (2) the operator has flared 20,000 Mcf of gas, as provided in paragraph (a)(2); or (3) flowback has been routed to the production separator, as provided in paragraph (a)(3). Paragraph (e) of this section of the final rule requires operators to submit their requests for extension using a Sundry Notice. One commenter contended that royalty-free flaring thresholds for well completion in the proposed rule were ''arbitrarily low.'' The BLM has increased these thresholds in the final rule.

This final section includes the flowback period following a completion or recompletion. As suggested by some commenters, the BLM removed the provision in proposed § 3179.103(a)(1) allowing the operator to flare royalty-free until adequate reservoir information for the well was obtained. Comments indicated that this provision was an obsolete vestige of NTL–4A, and operators no longer initially test wells for reservoir information. To avoid confusion about testing and flowback following completion or recompletion, the BLM's final rule includes time and volumetric flaring limits for well completion or recompletion for flowback.

Section 3179.82 Subsequent Well Tests for an Existing Completion

For the final rule, the BLM redesignated and retitled this section from § 3179.104, ''Subsequent well tests,'' to § 3179.82, ''Subsequent well tests for an existing completion.'' One commenter argued that since the BLM's rule is focused on waste prevention from a royalty perspective, the BLM should not allow operators to extend subsequent well testing without a royalty obligation beyond 24 hours. The BLM has always been responsible for ensuring that oil and gas resources belonging to the public or to Indian mineral owners have been produced in a reasonable manner, measured accurately, and reported properly. The allowance for an extension to the 24-hour well testing period was part of NTL–4A. Operators rarely need to submit well testing extension requests and, when they do, the AO may deny the request if the flaring during well testing would be excessive. Further, this section also allows for a longer flare period for any well testing that the BLM may require of an operator. Accordingly, the BLM disagrees with the comment and did not make any changes to this section.

Another commenter indicated that the BLM does not provide an appeal process within this section if an operator would like to appeal a BLM decision not to extend the well-testing period. The BLM allows for appeal of any BLM decision from an adversely affected party pursuant to 43 CFR 3165.3. The BLM did not change this section based on this comment.

Section 3179.83 Emergencies

The BLM redesignated this section from § 3179.105 in the proposed rule to § 3179.83 in the final rule. One

commenter stated that the proposed rule did not indicate who will make the determination of whether a situation will be treated as an emergency. The final rule indicates that the AO will receive the Sundry Notice and make a determination of avoidable or unavoidable loss based on the event circumstances. In § 3179.83(a), the BLM defines an emergency situation as a temporary, infrequent, and unavoidable situation in which the loss of gas is necessary to avoid a danger to human health, safety, or the environment. To further clarify the definition of an emergency, the BLM provides in § 3179.83(b) common examples of situations that do not qualify as emergencies. Given the definition and the illustrative situations that do not constitute an emergency, the BLM believes operators will be able to report the lost volumes with the appropriate disposition codes on the OGOR. From this section, the BLM believes that operators can measure or estimate lost volumes appropriately on the OGOR for the initial 48 hours of the emergency situation that are royalty-free. Beyond the initial 48 hours of an emergency, there may be a royalty obligation and, in final § 3179.83(c), the BLM included a description of the type of information that operators must include on a Sundry Notice to enable the BLM to make an avoidable or unavoidable loss determination. The BLM added this provision in the final rule for consistency with section 50263 of the IRA.

The BLM also received a comment suggesting that the BLM should expressly include severe weather events and natural disasters as emergencies. Severe weather and natural disasters were not provisions in NTL–4A. While the BLM believes that severe weather and natural disasters may require other types of safety precautions, such as temporarily shutting in a well, and if a well were shut in for severe weather or natural disasters, then there is no need to be concerned about associated gas flaring. If the well continues to produce oil, then this does not constitute an emergency for flaring gas royalty-free. The commenter did not provide adequate justification for this type of change to the final rule.

Gas Flared or Vented From Equipment and During Well Maintenance Operations

Section 3179.90 Oil Storage Tank Vapors

Based on comments on the proposed rule, the BLM changed the requirements in proposed § 3179.203, which has been redesignated as § 3179.90 in the final rule.

In response to comments, the BLM changed the term ''oil storage vessels'' in the proposed section to ''oil storage tanks'' in the final rule. This change in terminology brings this section of the final rule into alignment with subpart 3174, Measurement of oil. The BLM received several comments on the proposed requirements for vapor recovery equipment and the immediate assessment of $1,000 per violation for an oil storage tank hatch left open or unlatched, and unattended. After careful consideration of the comments, the BLM removed the vapor recovery requirements from § 3179.90 for two reasons.

First, the BLM's focus is on waste prevention, including loss of royalties, and the proposed vapor recovery requirement would not increase royalties with any certainty. Many commenters stated that the annual requirement to obtain a sample and compositional analysis of the tank vapors was expensive, excessive, and in their view served no purpose. The BLM agrees that those requirements would contribute little to assuring proper royalty collection.

Second, even if the installation of vapor recovery equipment might be economic, there is no guarantee that the tank vapors collected would have adequate pressure for a sales line. Under these circumstances, the BLM would be requiring operators to incur a capital expense with no guarantee of sales or associated royalties for the public, or for Indian mineral owners. For these main reasons, the BLM has decided to remove the vapor-recovery-equipment requirements in this section.

A commenter pointed out that there are tank hatches designed to open with excess pressure, and such openings might occur prior to or during inspections, and that there should be no immediate assessment for open, unlatched, and unattended tank hatches. API Standard 2000 Venting Atmospheric and Low-pressure Storage Tanks (Reaffirmed, April 2020) Section 3.4.2, Emergency Venting, indicates that a gauge hatch that permits the cover to lift under abnormal internal pressure is an acceptable emergency venting method, among other provisions. While there are tanks designed and built with this type of emergency venting gauge hatch, in the BLM's experience, this type of hatch is very uncommon equipment located on a Federal or Indian oil and gas lease. If an operator does have an emergency venting gauge hatch on the tank, the operator may request a variance pursuant to § 3170.6.

Other commenters asserted that the requirements for the oil storage tank hatch presented a safety risk. Commenters specifically referenced North Dakota Department of Environmental Quality (NDDEQ) guidance that, according to the commenters, ''allows for tank vapor flares and control devices to be bypassed when a well is shut in to minimize the risk. In these cases, the hatches may need to be left open to relieve breathing pressure due to temperature fluctuations throughout the day.'' The BLM has been unable to locate that exact quote from NDDEQ's website, but has found guidance for shut-in, upstream facilities.[152] The BLM confirmed by phone call with NDDEQ that this memo appears to be that referenced by the commenter. The BLM agrees with the NDDEQ guidance that, if a facility is completely shut-in and any production to tanks has ceased, then emissions are expected to be minimal and operators may be in compliance with VOC emissions standards with the hatch left open. With this final rule, the BLM is regulating waste prevention from producing oil and gas wells. The BLM is not regulating emissions from shut-in facilities in this final rule.

As a general matter, the requirement to maintain all hatches and connection and other access points vapor tight and capable of holding pressure in excess of the pressure relieving device has been in place since the BLM referenced API 12R1 Recommended Practice for Setting, Connecting, Maintenance and Operations of Lease Tanks, Third Edition, May 1986 in Onshore Oil and Gas Order No. 4, Measurement of Oil.[153] The current API Standard 12R1, Installation, Operation, Maintenance, Inspection, and Repair of Tanks in Production Service, Sixth Edition, March 2020, Section 4.5.2 states, ''All hatches, connections, and other access points shall be gasketed and kept closed during operation to minimize vapor emissions.'' One commenter stated that the closure of a tank hatch was a prudent operator standard and one that industry follows diligently. The BLM thus concludes that, at a producing facility, latching a tank hatch closed is the current industry practice, and well

[152] *https://deq.nd.gov/publications/AQ/policy/PC/OilGas/20210823StorageTankMemo.pdf.*

[153] The BLM includes API 12R1, Third edition, from May 1986 as historical reference that the requirement for vapor tight connections was an industry standard included in the BLM's Onshore Oil and Gas Order No. 4 later codified at 43 CFR subpart 3174 Measurement of oil.

within the capabilities of competent operators.

An immediate assessment is appropriate for violating such an industry standard incorporated into the final rule. Immediate assessments are not new. They have ''long been considered to be in the nature of liquidated damages, allowing the BLM to recover the administrative and other costs incurred as a consequence of the operator's noncompliance, where actual damages are difficult or impracticable to ascertain, and regardless of whether there has been any actual threat to public health, safety, property, or the environment.'' *Brigham Oil & Gas,* 181 IBLA 282, 287 (2011) (citing authorities). On this understanding of the MLA, the volumes of gases lost (or the safety or environmental risks caused by an improperly opened or leaking hatch) are impossible to quantify, but the BLM would nonetheless incur costs of, *inter alia,* enforcement actions to assure the violation is abated. Thus, the BLM's statutory authority for such an assessment in this context flows from 30 U.S.C. 188(a) (providing that the lease may provide for resort to appropriate methods for the settlement of disputes or for remedies for breach of specified conditions thereof,'' which conditions necessarily encompass these regulations), and the BLM's waste prevention authority.

Section 3179.91 Downhole Well Maintenance and Liquids Unloading

The BLM redesignated this section from § 3179.204 in the proposed rule to § 3179.91 in the final rule. The BLM received two comments in support of this proposed section with one commenter explicitly agreeing with the BLM's inclusion of the requirement for a person to be on site for well purging and that the person end the event as soon as practical. Based on the comments, the BLM did not make any substantive changes to this final section.

Section 3179.92 Size of Production Equipment

This section was designated as § 3179.205 in the proposed rule. One commenter on this section stated that the requirement to size production and processing equipment properly based on the production volume at the facility is consistent with current industry practice. Another commenter pointed out that the States of New Mexico and Colorado have State requirements similar to this section. The same commenter recommended that, if operators fail to comply with the requirement to properly size their production equipment, the BLM should deem that failure to constitute unreasonable and undue waste. The BLM did not adopt this suggestion, because it has elected to remove the term ''unreasonable and undue waste'' from the final rule.

Under the final rule, an operator who fails to size the equipment properly will receive an Incident of Noncompliance as a major violation with an abatement period to fix the violation. If an operator fails to comply within the abatement period, the BLM may escalate enforcement to civil penalties. The BLM did not make any changes to the regulatory text in this section in response to the comments received.

Leak Detection and Repair (LDAR)

Section 3179.100 Leak Detection and Repair Program

The BLM redesignated the LDAR program section from the proposed rule at § 3179.301 to the final rule at § 3179.100. Section 3179.100 provides the requirements for operators to set up and maintain programs for detecting and repairing natural-gas leaks from their operations and production equipment. Section 3179.101 gives the timetable and requirements for repairing leaks. Section 3179.102 provides the requirements for recordkeeping. The LDAR program applies only to operations and production equipment located on a Federal or Indian oil and gas lease. The LDAR program and requirements do not apply to operations and production equipment on State or private tracts, even where those tracts are committed to a federally approved unit or CA (see § 3179.2).

The BLM received numerous comments requesting that the BLM allow operators to demonstrate their compliance with BLM requirements by showing that they already comply with EPA's OOOO series rules or State leak detection rules. The BLM considered and rejected this alternative approach to compliance. First, the BLM's final Waste Prevention Rule serves a different statutory purpose (conservation of resources) than EPA's rule (protection of human health and welfare vis-a-vis air quality). The BLM further declines to allow compliance with EPA's OOOOb and OOOOc to demonstrate compliance with BLM's waste prevention rule given the different statutory goals of each rule and the acute need to reduce waste or receive compensation for waste of the public and Indian mineral resource. Where the BLM has independently determined that specific provisions from EPA are sufficient to accomplish the BLM's waste prevention mandate, the BLM has made limited changes in the final rule as set forth below at § 3179.100(b)(2).

Second, the BLM's LDAR program is limited to operations and production equipment located on Federal or Indian oil and gas leases. Since the scope for this section is limited, it is appropriate for the BLM to have its own requirements that would not interfere with implementation of any EPA final rule. The BLM's LDAR program is focused on monitoring and repairing leaks as quickly as possible to meet its waste prevention objective of maximizing production by keeping it contained within the system and flowing through the sales point.

Commenters also suggested that any final LDAR program cover a larger area than simply a single lease, unit PA, or CA. The BLM evaluated its ability to review individual LDAR programs for every single lease, unit PA, or CA, and agrees with the commenters. The BLM changed its final rule to require operators to submit LDAR programs corresponding to the BLM-administrative State. The initial LDAR programs and the annual reviews and updates of the originally submitted LDAR program must be submitted to the appropriate BLM state office in writing until such time as the BLM has the ability to receive the LDAR programs and annual reviews and update reports electronically.

In the proposed rule, the BLM required the operator to submit the LDAR program no later than 6 months after the effective date of the final rule. Commenters believed this timeframe was too short for submitting the initial program. The BLM agrees. The BLM extended the time in which operators must submit an LDAR program to the BLM administrative state office because the BLM adopted commenters' suggestion to expand the geographic area for which an operator creates the LDAR program. In the proposed rule, LDAR programs were to be submitted to a BLM Field Office for review; in the final rule this was changed to a larger geographic area and therefore BLM extended the time to prepare the programs. In this final rule, the BLM extends this timeframe for compliance to within 18 months of the effective date of the final rule. This 18-month timeframe for compliance is likely to go into effect prior to standards in state plans submitted in response to EPA's OOOOc rule.

This final section requires operators to review and update submitted LDAR programs on an annual basis. The annual update is due in the same month in which the operator submitted the initial LDAR program to the BLM. The

annual report ensures that information about the identified leases, unit PAs, and CAs, leak detection methods, current operator, and frequency of inspections is current. If the LDAR program requires no changes, then the operator must notify the BLM state office that the LDAR program submitted and reviewed remains in effect. The requirement for an annual update and review is also cross-referenced in the section about recordkeeping requirements for leak detection in final § 3179.102.

The BLM received comments that the requirements for the LDAR program were vague, with no guidance or requirements as to what the BLM would determine as adequate or inadequate and what additional measures the BLM might prescribe to address any identified deficiencies in the program. The BLM acknowledges the commenters' concern, and in the final rule modified some requirements for the LDAR program that should avoid conflict with the EPA's OOOO series requirements. In final rule § 3179.100(b), the LDAR program requires the operator to submit the following information for the LDAR program: (1) identification of the leases, unit PAs, and CAs by geographic State for all States within the BLM's administrative State boundaries to which the LDAR program applies; (2) identification of the method and frequency of leak detection inspection used at the lease, unit PA, or CA. Under final rule § 3179.100(b)(2), acceptable inspection methods and frequency include: (i) well pads with only wellheads and no production equipment or storage must include quarterly AVO inspections for leak detection; (ii) well pads with any production and processing equipment and oil storage must include AVO inspections every other month and quarterly OGI for leak detection; and (iii) other leak detection inspection methods and frequency acceptable to the BLM (*e.g.,* continuous monitoring); (3) identification of the operator's recordkeeping process for LDAR pursuant to final § 3179.102.

Final § 3179.100 requires operators to directly submit initial LDAR programs and subsequent annual LDAR reports to BLM state offices for review. At this time, the BLM's Automated Fluid Minerals Support System is unable to receive LDAR programs or annual reports. In the future, the BLM anticipates having a new electronic database that will be able to accept LDAR program requirements. When a new electronic database is available and capable of receiving the LDAR program requirements, the BLM will notify operators and give them sufficient time to prepare for electronic submission of LDAR program requirements.

Section 3179.101 Repairing Leaks

The final rule redesignated this section from § 3179.302 in the proposed rule to § 3179.101 in the final. The BLM received comments supporting this section as written in the proposed rule. One commenter suggested changing the repair periods to align with their EPA counterparts to eliminate confusion between the two agencies' requirements. The BLM's proposed period remains unchanged because the BLM has determined that its timeframes are sufficient to meet the BLM's waste prevention needs. Even though EPA is providing the delay of repair provisions for up to 2 years under specific conditions for the enforcement of air quality, the BLM elects to maintain a shorter time for repair for the prevention of waste.

A second commenter suggested that paragraph (d), which gives operators 15 calendar days to address an ineffective repair, is an insufficient amount of time. The BLM reminds the commenter that this is 15 days for an ineffective repair. Prior to this point, the operator will have had 30 calendar days after discovery of the leak to effectively repair the leak. The proposed and final rules provide an additional 15 calendar days to repair an ineffectively repaired leak. The repair of leaks in a timely manner is a maintenance obligation and demonstrates operator performance in a good and workmanlike manner. The 15-day allowance for an ineffective repair—45 days in total—should not be cause for concern for a diligent operator. The BLM did not make any changes to the regulatory text of this section based on comments.

Section 3179.102 Required Recordkeeping for Leak Dtection Inspection and Repair

The BLM redesignated this section in the final rule from § 3179.303 in the proposed rule to § 3179.102 in the final. Commenters asked the BLM to remove the requirement for operators to submit an annual report to the BLM on March 31 of each calendar year summarizing the previous year's inspection activities, including: (1) the number of sites inspected; (2) the total number of leaks identified, categorized by the type of component that was leaking; (3) the total number of leaks repaired and (4) the total number of leaks that were not repaired as of December 31 of the previous year due to good cause, along with an estimated date of repair for each leak. The commenters requested this information be kept on site and be made available to the AO upon request. Commenters also contended that the March 31 and December 31 dates as arbitrary. The BLM disagrees in part to the comments. The annual report is an integral part of informing the BLM as to whether the LDAR program is beneficial in reducing leaks and preventing waste, or, in other words, whether it is an effective program that is worth continuing. The BLM agrees in part that removing the two dates of March 31 and December 31 from the final rule would allow an operator to report similar information to the BLM and EPA on the same dates. Thus, the BLM removed the March 31 and December 31 dates that had been proposed to define the LDAR program year, and instead the final rule allows operators to determine the LDAR program year based on the submission of their initial LDAR program to the BLM state office for review within 18 months of the effective date of the rule pursuant to final § 3179.100. The BLM also removed the requirement for the annual report to contain the total number of leaks repaired in the year. This information may be determined from the other information required on the annual report.

As a reminder, final §§ 3179.100 through 3179.103 apply only to operations and production equipment located on a Federal or Indian oil and gas lease. The aforementioned sections do not apply to operations and production equipment on State or private tracts, even when those tracts are committed to a federally approved unit or CA.

Immediate Assessments

Section 3179.200 Immediate Assessments

The BLM did not include a section on immediate assessments in the proposed rule. However, the proposed rule contained two immediate assessments: proposed § 3179.6(b) for unlit flares and proposed § 3179.203(a) for thief hatch left open and unattended. There are no new immediate assessments in the final rule. The immediate assessment for the unlit flare is found in the redesignated § 3179.50(b) and for the hatch left open and unattended is found in the redesignated § 3179.90(a).

The BLM included this new section summarizing the immediate assessments found elsewhere in final subpart 3179 for consistency with other subparts in part 3170 that contain immediate assessments, such as §§ 3173.29, 3174.15, and 3175.150. The BLM believes the tables with immediate

assessments provided in these subparts provide the regulated community and BLM inspectors with a quick reference for the immediate assessments found within the respective subparts.

Sections That the BLM Removed

Section 3179.102 Well Completion and Related Operations

In the final rule, the BLM removed proposed § 3179.102, ''Well completion and related operations,'' and instead opted for a simpler approach to flaring following well completion or recompletion that appears in the final § 3179.81. Based on numerous comments, the BLM elected to eliminate the distinction made in proposed § 3179.102 between a new completion that is hydraulically fractured and an existing completion that is hydraulically refractured. In the proposed rule, the BLM made this distinction because the BLM believed that it is more likely for existing completions that are refractured to be connected to a sales line to capture flowback gas to sales sooner and limit flaring as a result. Comments revealed that the proposed sections were confusing. The BLM eliminated proposed § 3179.102 to simplify and make the flaring limits more straightforward.

Based on comments received for the proposed rule, the BLM removed proposed § 3179.201 ''Pneumatic controllers and pneumatic diaphragm pumps.'' The rationale for the removal and reduction of requirements for this section are discussed below. The removal of proposed § 3179.201 means that the subpart 3179 requirements that apply only to operations on Federal and Indian surface estate have been reduced in the final rule.

Section 3179.201 Pneumatic Controllers and Pneumatic Diaphragm Pumps

Proposed § 3179.201 limited the bleed rate of natural-gas-activated pneumatic controllers and pneumatic diaphragm pumps to 6 scf per hour for leases, unit PAs, and CAs producing greater than 120 Mcf of gas or 20 barrels of oil per month. The BLM's intention was to limit the bleed rate of natural-gas-activated pneumatic diaphragm pumps to decrease the volume of bleed gas and simultaneously increase the amount of gas that would be sold. The BLM's proposed RIA indicated the monetary benefits to industry for this requirement exceeded the costs. The proposed rule RIA estimated that operators would replace up to 52,213 pneumatics devices, resulting in an estimated 5.93 Bcf of gas conserved annually. The 5.93 Bcf of gas conserved described in the proposed RIA was an initial estimate that assumed that all intermittent bleed pneumatic controllers would bleed continuously throughout the year. BLM recognizes that is not how intermittent bleed pneumatic controllers are operated. Rather BLM understands that this equipment is used in varying ways based on operating conditions. A more precise estimate is difficult to ascertain because the BLM does not track production equipment of this type. The proposed RIA also relied on EPA's U.S. GHG Emissions data (*https://www.epa.gov/ghgemissions/inventory-us-greenhouse-gas-emissions-and-sinks-1990-2021*), from which it is inherently difficult to attribute emissions volumes to operations on Federal and Indian surface estate.

After reviewing public comments on this section and evaluating the practical implications of enforcement of this section, the BLM decided to remove this section in its entirety. The BLM authorizes royalty-free use of lease production for operations and production purposes, including placing oil or gas in marketable condition on the same lease, unit PA, or CA prior to removal from the lease, unit PA, or CA. The requirements for royalty-free use of lease production are found in subpart 3178. Subpart 3178 does not limit the volume of royalty-free use oil or gas so long as the volume is reasonable for the operation. To limit the use of pneumatic controllers and pneumatic diaphragm pumps to less than 6 scf per hour would have created a conflict with 43 CFR subpart 3178. In addition, the BLM considered the practical difficulty in inspecting for and enforcing the requirements of the proposed section, which would obligate the BLM to maintain an extensive database of pneumatic equipment with the manufacturer's advertised bleed rate for enforcement. During a production inspection, a BLM inspector would ascertain whether the device exceeded the required bleed rate and, if it did, require the operator to replace the equipment. Proposed 3179.4(b)(7) would have allowed for normal operating losses from a natural-gas-activated pneumatic controller or pump to qualify as an unavoidable loss. Therefore, during any inspection there could have been no determination of avoidably lost gas with a royalty obligation, making this provision irrelevant for royalty collection purposes.

Section 3179.401 State and Tribal Requests for Variances From the Requirements of This Subpart

Proposed § 3179.401 would have reinstated the State or Tribal variance provision from the 2016 Waste Prevention Rule. The provision would have allowed States and Tribes to request a variance under which analogous State or Tribal rules would have applied in place of some or all of the requirements of subpart 3179. With a variance request, the State or Tribe would have been required to: identify the subpart 3179 provision(s) for which the variance is requested; identify the State, local, or Tribal rules that would be applied instead; explain why the variance is needed; and, demonstrate how the State, local, or Tribal rules would be as effective as the subpart 3179 provisions in terms of reducing waste, reducing environmental impacts, assuring appropriate royalty payments, and ensuring the safe and responsible production of oil and gas.

The BLM State Director would have been authorized to approve the variance request or approve it subject to conditions, after considering all relevant factors. This decision would have been entirely at the BLM's discretion and would not be subject to administrative appeals under 43 CFR part 4. If the BLM were to have approved a variance, the State or Tribe that requested the variance would be obligated to notify the BLM of any substantive amendments, revisions, or other changes to the State, local, or Tribal rules to be applied under the variance. Finally, if the BLM were to have approved a variance under this section, the BLM would have been authorized to enforce the State, local, or Tribal rules applied under the variance as if they were contained in the BLM's regulations.

In the proposed rule, the BLM requested public comment seeking confirmation that such variances would be both useful and practical. The BLM also requested that commenters provide specific examples of situations where the variance provision in proposed § 3179.401 would improve on existing practices and administrative tools, such as Memoranda of Understanding (MOUs), in terms of providing better environmental protection, better protection of taxpayer and lessor interests, administrative efficiencies, and burden reductions for operators.

Several commenters offered general support for the BLM's proposed rule to allow for State or Tribal variance requests. Commenters expressed concerns for the increased need for

limited State resources for the process and implementation, for conflict with the MLA prohibition on the promulgation of rules ''in conflict with the laws of the State in which the leased property is situated,'' [154] and the lack of clarity in the proposed requirement that the State or Tribal regulation would perform ''at least equally well'' as the BLM rule. The BLM agrees with some of these concerns. However, the BLM did not receive comments confirming that the variances would be both useful and practical or that variances would improve on existing practices and administrative tools, such as MOUs. Commenters expressed support for the use of MOUs,

In the final rule, the BLM decided not to carry forward the proposed provision to allow for State and Tribal variances. Upon further review, the BLM believes that the provision would have created a significant administrative burden for the agency while not improving on existing practices and administrative tools.

Operators in States or on Tribal lands that have more stringent standards than those contained in this rule are required to conform to the more stringent State or Tribal standards, regardless of whether the State or Tribe receives a variance under the provision of the proposed rule. Such situations routinely arise in the context of other BLM oil and gas operational regulations, indicating that a variance provision in this rule is not useful. Commenters failed to show that the subpart 3179 provisions would conflict with any State's more stringent requirements. The BLM has also not identified any such conflict. Thus, with or without a formal variance, a State or Tribe may effectively supplement the BLM's regulatory requirements by enacting stricter requirements. That is consistent with the BLM's longstanding practice.

There are benefits associated with aligning data collection processes or other potential areas of regulatory similarity that could bring greater efficiencies for both operators and regulators, but MOUs can more efficiently achieve many of those goals without the need for a State or Tribal variance.

Commenters requested that the BLM pursue a Title V Operating Permit Program similar to EPA's under the CAA and do further work to promote Tribal self-determination and self-governance within this rule. The BLM lacks EPA's CAA authority, but welcomes the opportunity to consult with Tribes concerning cooperative agreements.

While the variance provisions are not in the final rule, the BLM welcomes the opportunity to enter into MOUs or similar agreements with States and Tribes to clarify applicable regulatory requirements, which is also part of longstanding practice.

VI. Procedural Matters

A. Regulatory Planning and Review (E.O. 12866, E.O. 13563)

Executive Order 12866, as amended by Executive Order 14094, provides that the Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget (OMB) will review all significant rules. The OIRA has determined that this final rule is significant.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Executive Order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

This final rule replaces the BLM's current rules governing venting and flaring, which are contained in NTL–4A. We have developed this final rule in a manner consistent with the requirements in Executive Order 12866 and Executive Order 13563.

The monetized costs and benefits of this rule can be seen in the following table along with the transfer payments this rule will provide in the form of increased royalties from increased gas sales. The total monetized Net Benefit on an annualized basis is $360,000 at a 7 percent discount rate and $441,000 at a 3 percent discount rate. Additional unquantified benefits from reduced emissions of VOCs and hazardous air pollutants are discussed further in the RIA. The BLM reiterates that, while it has included benefits associated with the social cost of greenhouse gases in this particular presentation of costs and benefits and in the RIA, this was done to respond to Executive Orders 12866 and 13563 and in order to present as complete a picture as possible of the total costs and benefits of the final rule for the public. Climate benefits derived from foregone emissions were not a factor in the decision to include any of the individual waste prevention requirements in this final rule.

COSTS AND BENEFITS SUMMARY

[2024–2033]

	7% Discount rate		3% Discount rate	
	NPV ($MM)	Annualized ($MM)	NPV ($MM)	Annualized ($MM)
Costs				
Measurements	$8.46	$1.20	$9.60	$1.13
LDAR	64.55	9.19	78.40	9.19
Administrative Burdens	62.56	8.91	75.98	8.91
Total Cost	135.57	19.30	163.98	19.22

[154] 30 U.S.C. 187.

COSTS AND BENEFITS SUMMARY—Continued

[2024–2033]

	7% Discount rate		3% Discount rate	
	NPV ($MM)	Annualized ($MM)	NPV ($MM)	Annualized ($MM)
Benefits				
LDAR	$165.07	19.66	167.74	19.66
Total Benefits	165.07	19.66	167.74	19.66
Net Benefits	29.50	0.36	3.76	0.44
Transfer Payments	360.04	51.26	438.59	51.42

The BLM reviewed the requirements of the final rule and determined that they will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities. For more detailed information, see the RIA prepared for this final rule. The RIA has been posted in the docket for the final rule on the Federal eRulemaking Portal: *https://www.regulations.gov.* In the Searchbox, enter ''RIN 1004–AE79,'' click the ''Search'' button, open the Docket Folder, and look under Supporting Documents.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) requires that Federal agencies prepare a regulatory flexibility analysis for rules subject to the notice-and-comment rulemaking requirements under the APA (5 U.S.C. 500 *et seq.*), if the rule would have a significant economic impact, whether detrimental or beneficial, on a substantial number of small entities. See 5 U.S.C. 601 612. Congress enacted the RFA to ensure that government regulations do not unnecessarily or disproportionately burden small entities. Small entities include small businesses, small governmental jurisdictions, and small not-for-profit enterprises.

The BLM reviewed the Small Business Administration (SBA) size standards for small businesses and the number of entities fitting those size standards as reported by the U.S. Census Bureau in the Economic Census. The BLM concludes that the vast majority of entities operating in the relevant sectors are small businesses, as defined by the SBA. As such, the final rule will likely affect a substantial number of small entities.

The BLM reviewed the final rule and has determined that, although the final rule will likely affect a substantial number of small entities, that effect will not be significant. The basis for this determination is explained in more detail in the RIA. In brief, the per-entity, annualized compliance costs associated with this final rule are estimated to represent only a small fraction of the annual net incomes of the companies likely to be impacted. Because the final rule will not have a ''significant economic impact on a substantial number of small entities,'' as that phrase is used in 5 U.S.C. 605, a final regulatory flexibility analysis and regulatory compliance guide are not required. The Secretary of the Interior 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.

C. Congressional Review Act

The statutory provision found at 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act, does not apply to this final rule because it is estimated that the rule will not have an annual economic impact of $100 million or more. As noted in the Costs and Benefits Summary earlier, the RIA that the BLM produced for this rule calculates that this rule will cost operators $19.3 million per year (using a 7 percent discount rate) for the next 10 years, while generating benefits to operators of approximately $1.8 million a year (using a 7 percent discount rate) in the form of 0.45 Bcf of additional captured gas. The reduced methane emissions associated with the final rule will provide a benefit to society of $17.9 million a year over the same time frame, leading to a net benefit from the rule of $360,000 to $441,000 a year.

D. Unfunded Mandates Reform Act (UMRA)

The final rule will not have a significant or unique effect on State, local, or Tribal governments or the private sector. The final rule contains no requirements that apply to State, local, or Tribal governments. The final rule revises requirements that otherwise apply to the private sector participating in a voluntary Federal program. The costs that the final rule will impose on the private sector are below the monetary threshold established at 2 U.S.C. 1532(a). A statement containing the information required by the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1531 *et seq.*) is therefore not required for the final rule. This final rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments, because it contains no requirements that apply to such governments, nor does it impose obligations upon them.

E. Governmental Actions and Interference With Constitutionally Protected Property Right-Takings (Executive Order 12630)

This final rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630. A takings implication assessment is not required. The final rule will replace the BLM's current rules governing venting and flaring, which are contained in NTL–4A. Therefore, the final rule will impact some operational and administrative requirements on Federal and Indian lands. All such operations are subject to lease terms which expressly require that subsequent lease activities be conducted in compliance with subsequently adopted Federal laws and regulations.

This final rule conforms to the terms of those leases and applicable statutes and, as such, the rule is not a government action capable of interfering with constitutionally protected property rights. Therefore, the BLM has determined that the rule will not cause a taking of private property or require further discussion of takings implications under Executive Order 12630.

F. Federalism (Executive Order 13132)

Under the criteria in section 1 of Executive Order 13132, this final rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. A federalism impact statement is not required.

The final rule will not have a substantial direct effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the levels of government. It will not apply to States or local governments or State or local governmental entities. The rule will affect the relationship between operators, lessees, and the BLM, but it will not directly impact the States. Therefore, in accordance with Executive Order 13132, the BLM has determined that this final rule will not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

G. Civil Justice Reform (Executive Order 12988)

This final rule complies with the requirements of Executive Order 12988. More specifically, this final rule meets the criteria of section 3(a), which requires agencies to review all regulations to eliminate errors and ambiguity and to write all regulations to minimize litigation. This final rule also meets the criteria of section 3(b)(2), which requires agencies to write all regulations in clear language with clear legal standards.

H. Consultation and Coordination With Indian Tribal Governments (Executive Order 13175 and Departmental Policy)

The Department strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty.

The BLM evaluated this final rule under the Department's consultation policy and under the criteria in Executive Order 13175 to identify possible effects of the rule on federally recognized Indian Tribes. Since the BLM approves proposed operations on all Indian (except Osage Tribe) onshore oil and gas leases, the final rule has the potential to affect Indian Tribes.

In August of 2021, the BLM sent a letter to each federally recognized Tribe informing them of certain rulemaking efforts, including the development of this final rule. The letter offered Tribes the opportunity for individual government-to-government consultation regarding the final rule. Three Tribes responded to the letter and requested government-to-government consultation. The BLM conducted Tribal consultations with those three Tribes during the rulemaking process.

I. Paperwork Reduction Act

A. Overview

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) generally provides that an agency may not conduct or sponsor a collection of information, and, notwithstanding any other provision of law, a person is not required to respond to collection of information unless it has been approved by the Office of Management and Budget (OMB) and displays a currently valid OMB control number. The information collections requirements contained in the BLMs waste prevention standard as contained in 43 CFR parts 3160, 3170, and subpart 3178 have been approved by OMB under OMB control number 1004–0211.

This Final rule contains revised and new information collection (IC) requirements for BLM regulations and requires a submission to OMB for review under the PRA, as outlined in the PRA implementing regulations at 5 CFR 1320.11. The IC requirements are necessary to assist the BLM in preventing venting, flaring, and leaks that waste the public's resources and assets. Respondents are holders of Federal and Indian oil and gas leases. The information collection requirements are outlined in the BLM's waste prevention standards as well as on BLM Forms 3160–3 (''Application for Permit to Drill or Reenter'') and 3160–5 (''Sundry Notices and Reports on Wells''). Forms 3160–3 and 3160–5 are used broadly for onshore oil and gas operations and production purposes under 43 CFR parts 3160 and 3170 and are approved under OMB control number 1004–0137. This final rule does not introduce any changes to Forms 3160–3 and 3160–5 and the forms will continue to be approved under OMB control number 1004–0137; however, this information collection request (ICR) seeks to include burdens specific to the use of Forms 3160–3 and 3160–5 in regard to the proposed waste prevention standard subject to this final rule. The final rule contains the below new and revised IC requirements.

B. Effects on Existing Information Collections Requirements

The final rule revises certain existing information collection requirements and introduces new information collection requirements. These information collection requirements are discussed in detail in the information collection request submitted to OMB and are available at *http://www.reginfo.gov/public/do/PRAMain* under OMB control number 1004–0211 as outlined below.

Existing § 3162.3–1 Drilling Applications and Plans (Application for Permit To Drill Oil Well and WMP)

The final rule amends § 3162.3–1 to include the requirement for a WMP (using Form 3160–3) or self-certification. In addition, the final rule adds § 3162.3–1(j), which requires that when submitting an APD for an oil well, the operator must also submit a plan to minimize waste of natural gas from that well or alternatively, in § 3162.3–1(k), a self-certification for 100 percent capture of the associated gas.

Request for Approval for Royalty-Free Uses On-Lease or Off-Lease (43 CFR 3178.5, 3178.7, 3178.8, and 3178.9)

Sections 3178.5, 3178.7, and 3178.9 of the BLM's current rules require submission of a Sundry Notice (Form 3160–5) to request prior written BLM approval for use of gas royalty-free for the following operations and production purposes on the lease, unit or communitized area. This final rule does not address nor would change this existing requirement.

C. New Information Collection Requirements

The final rule introduces new information collection requirements in the new subpart 43 CFR subpart 3179. These information collection requirements are discussed in detail in the information collection request to submitted to OMB and are available at *http://www.reginfo.gov/public/do/PRAMain* under OMB control number 1004–0211, as outlined below.

The final subpart 3179 has information collection requirements, as discussed below. The purpose of this subpart is to implement and carry out the purposes of statutes to prevent waste from covered Federal and Indian oil and gas leases with requirements for flaring and venting of produced gas, requirements for the waste of gas from leaks, and clearly defining unavoidably and avoidably lost gas.

Section 3179.41 Determining When the Loss of Oil or Gas Is Avoidable or Unavoidable (Notifying the BLM Prior to Flaring)

Section 3179.41 requires that an operator notify the BLM through a Sundry Notices and Report on Wells, Form 3160–5, prior to the flaring of gas

from which at least 50 percent of natural gas liquids have been removed on-lease and captured for market, that the operator is conducting such capture and the inlet of the equipment used to remove the natural gas liquids will be an FMP.

Section 3179.71 Measurement of Flared Oil-Well Gas Volume

Section 3179.71(a) of the rule requires operators to measure volumes of gas using orifice meters or ultrasonic meters for flares measuring greater than 1,050 Mcf per month over the averaging period from wells, facilities and equipment on a lease, unit, or CA. The operator is required to install measurement for flares, but there are no information collection activities associated with the installation of measurement equipment. Sections 3179.71(d) and (e) provide the sampling requirements for non-commingled flares and commingled flares. The gas sample analysis will determine the Btu value the operator is required to report to the Office of Natural Resources Revenue Form ONRR–4054.

Section 3179.72 Required Reporting and Recordkeeping of Vented and Flared Gas Volumes

Section 3179.72 requires operators to maintain records of venting and flaring events beginning 3 months following the effective date of the rule. Operators are required to keep a record containing the information specified in this section and make it available to the BLM upon request.

Section 3179.80 Loss of Well Control While Drilling

Section 3179.80 provides that the operator must notify the BLM within 24 hours of the start of the loss of well control event and submit a Sundry Notice within 15 days following conclusion of the event to the BLM describing the loss of well control.

Section 3179.81 Well Completion and Recompletion Flaring Allowances and § 3179.82 Subsequent Well Tests for an Existing Completion

The final rule allows for royalty-free flaring following a new completion or recompletion until one of the following occurs: (1) 30 days have passed since beginning of the flowback following completion or recompletion; (2) 20,000 Mcf of gas have been flared; (3) flowback has been routed to the production separator. Section 3179.81 allows an operator to flare gas for 30 days since the beginning of the flowback under certain conditions and specified limits. Section 3179.82 permits an operator to flare gas for no more than 24 hours during well tests subsequent to the initial completion or recompletion flaring. An operator is required to submit its request for longer test periods or increased limits under paragraphs (b), (c), or (d) of this section using a Sundry Notice.

Section 3179.83 Emergencies

Section 3179.83 requires that within 45 days of the start of the emergency, the operator is required estimate and report to the BLM on a Sundry Notice the volumes flared or vented beyond the timeframes specified in paragraph (b) of this section.

Section 3179.90 Oil Storage Tank Vapors

The final rule for § 3179.90 requires an operator to only open the tank hatch to the extent necessary to conduct production and measurement operations. This section also requires the operator to maintain all oil storage tanks, hatches, connections and other tank access points in a vapor tight condition. An immediate assessment is imposed upon discovery of a hatch that is open or unlatched, and unattended.

Section 3179.100 Leak Detection and Repair Program

The rule requires an operator to maintain an LDAR program designed to prevent the undue waste of Federal or Indian gas. The LDAR program must provide for regular inspections of all oil and gas production, processing, treatment, storage, and measurement equipment on the lease site. Operators must submit their LDAR programs for BLM review, and the BLM would notify the operator if its program was determined to be inadequate. Operators are required to submit an annual report on inspections and repairs. Section 3179.100 requires that the operator of a Federal or Indian lease must submit the LDAR program to the BLM state office with jurisdiction over the production describing the operator's LDAR program for all the production facilities within the BLM administrative State boundaries, including the frequency of inspections and any instruments to be used for leak detection.

Section 3179.101 Repairing Leaks

Section 3179.101 requires that an operator repair any leak as soon as practicable, and in no event later than 30 calendar days after discovery, unless good cause exists to delay the repair for a longer period. Good cause for delay of repair exists if the repair (including replacement) is technically infeasible (including unavailability of parts that have been ordered), would require a pipeline blowdown, a compressor station shutdown, a well shut-in, or would be unsafe to conduct during operation of the unit. Paragraph (b) of this section would require that if there is good cause for delaying the repair beyond 30 calendar days, the operator must notify the BLM of the cause by Sundry Notice.

Section 3179.102 Leak Detection Inspection Recordkeeping and Reporting

Operators are required to keep records in inspections and repairs and submit those records to the BLM upon request. Section 3179.102 requires that an operator maintain certain records for the period required under § 3162.4–1(d) of this title and make them available to the BLM upon request.

D. Changes From the Proposed to Final Rule

Below are changes to the information collections in the final rule that are different from those in the proposed rule.

- The final rule includes § 3179.72 adds a new required reporting and recordkeeping of vented and flared gas volumes.
- The final rule includes § 3179.80, Unavoidable/Avoidable loss determination for drilling with loss of well control, adds a new Sundry-Notice requirement in the final rule that was not in the proposed rule.
- The BLM removed the proposed Annual compositional analysis for oil storage vessels that was contained in the proposed § 3179.203.
- The BLM removed the proposed State or Tribal requests for variances or amendments that was contained in the proposed §§ 3179.401 and 3179.401(e)).

E. Estimated Information Collection Burdens

Currently, there are 50 responses, 400 annual burden hours, and $0 non-hour cost burdens approved under this OMB control number. These burdens pertain to a Request for Approval for Royalty-Free Uses On-Lease or Off-Lease (43 CFR 3178.5, 3178.7, 3178.8, and 3178.9) which are not addressed in this final rule. The BLM projects that the information collections as contained in this final rule are to result in 58,301 new annual responses (from 50 to 58,351), 125,351 new annual burden hours (from 400 to 125,751); and $24,175,000 annual non-hour cost burdens ($0 to $24,175,000). The increase in annual burdens results from the Final rule results from the information collection activities

contained in the 43 CFR subpart 3179, a new subpart introduced by this final rule and a new requirement contained in 43 CFR 3162.3–1, Application, to Drill Oil Well and WMP.

Title: Waste Prevention, Production Subject to Royalties, and Resource Conservation (43 CFR parts 3160, 3170, 3178 and 3179).

OMB control number: 1004–0211.

Form Number: 3160–5 (OMB control number 1004–0137).

Type of Review: Revision of a currently approved collection.

Description of Respondents: Federal and Indian leases, as well as State and private tracts committed to a federally approved lease, unit, or communitized area.

Estimated Number of Respondents: 1,200.

Estimated Number of Annual Responses: 58,351.

Estimated Completion Time per Response: Varies from 1 hour to 8 hours depending on activity.

Estimated Total Annual Burden Hours: 125,751.

Respondents' Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion, Annually, Monthly, or one-time depending on activity.

Estimated Total Non-Hour Cost: $24,175,000.

In accordance with the PRA and the PRA implementing regulations at 5 CFR 1320.11, the BLM has submitted an ICR to OMB for the new and revised ICs in this final rule. As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on any aspect of this information collection, including:

(1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

If you want to comment on the information-collection requirements in this final rule, please send your comments and suggestions on this information-collection request within 30 days of publication of this final rule in the *Federal Registe*r to OMB at *www.reginfo.gov/public/do/PRAmain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

J. National Environmental Policy Act

The BLM has prepared a final EA to determine whether this proposed rule will have a significant impact on the quality of the human environment under the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*). The final EA supports the issuance of a Finding of No Significant Impact for the rule, therefore preparation of an environmental impact statement pursuant to the NEPA is not required.

The final EA has been placed in the file for the BLM's Administrative Record for the rule at the address specified in the **ADDRESSES** section. The EA has also been posted in the docket for the rule on the Federal eRulemaking Portal: *https://www.regulations.gov.* In the Searchbox, enter ''RIN 1004–AE79,'' click the ''Search'' button, open the Docket Folder, and look under Supporting Documents.

K. Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (Executive Order 13211)

Under Executive Order 13211, agencies are required to prepare and submit to OMB a Statement of Energy Effects for significant energy actions. This statement is to include a detailed statement of ''any adverse effects on energy supply, distribution, or use (including a shortfall in supply, price increases, and increase use of foreign supplies)'' for the action and reasonable alternatives and their effects.

Section 4(b) of Executive Order 13211 defines a ''significant energy action'' as ''any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) that is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of (OIRA) as a significant energy action.''

Since the compliance costs for this rule will represent a small fraction of company net incomes, the BLM has concluded that the rule is unlikely to impact the investment decisions of firms. See section 9 of the BLM's RIA. Also, any incremental production of gas estimated to result from the rule's enactment would constitute a small fraction of total U.S. gas production, and any potential and temporary deferred production of oil would likewise constitute a small fraction of total U.S. oil production. For these reasons, we do not expect that the final rule will significantly impact the supply, distribution, or use of energy. As such, the rulemaking is not a ''significant energy action,'' as defined in Executive Order 13211.

Authors

The principal authors of this final rule are: Amanda Fox, Petroleum Engineer, Santa Fe, NM; Beth Poindexter, Petroleum Engineer, San Antonio, TX; and the Office of the Solicitor, Department of the Interior. Technical support provided by: Tyson Sackett, Economist, Cheyenne, WY; Scott Rickard, Economist, Billings, MT; and Terry Snyder, Senior Natural Resources Specialist, Salt Lake City, UT. Assisted by: Casey Hodges, Petroleum Engineer, Granby, CO; and Senior Regulatory Analysts Faith Bremner and Darrin King of the BLM Washington Office.

List of Subjects

43 CFR Part 3160

Administrative practice and procedure, Government contracts, Indians—lands, Mineral royalties, Oil and gas exploration, Penalties, Public lands—mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3170

Administrative practice and procedure, Flaring, Immediate assessments, Incorporation by reference, Indians—lands, Mineral royalties, Oil and gas exploration, Oil and gas measurement, Public lands—mineral resources, Reporting and record keeping requirements, Royalty-free use, Venting.

For the reasons set out in the preamble, the Bureau of Land Management amends 43 CFR parts 3160 and 2170 as follows:

PART 3160—ONSHORE OIL AND GAS OPERATIONS

■ 1. The authority citation for part 3160 continues to read as follows:

Authority: 25 U.S.C. 396d and 2107; 30 U.S.C. 189, 306, 359, and 1751; 43 U.S.C. 1732(b), 1733, 1740; and Sec. 107, Pub. L. 114–74, 129 Stat. 599, unless otherwise noted.

■ 2. Amend § 3162.3–1 by revising paragraph (d) and adding paragraphs (j), (k), and (l) to read as follows:

§ 3162.3–1 Drilling applications and plans.

* * * * *

(d) The Application for Permit to Drill process must be initiated at least 30 days before commencement of operations is desired. Prior to approval, the application must be administratively and technically complete. A complete application consists of Form 3160–3 and the following attachments:

(1) A drilling plan, which may already be on file, containing information required by paragraph (e) of this section and appropriate orders and notices.

(2) A surface use plan of operations containing information required by paragraph (f) of this section and appropriate orders and notices.

(3) Evidence of bond coverage as required by the Department of the Interior regulations.

(4) For an oil well, a Waste Minimization Plan (WMP), as required by paragraph (j) or a self-certification statement, as required by paragraph (k) (These requirements do not apply to gas wells); and

(5) Such other information as may be required by applicable orders and notices.

* * * * *

(j) An Application for Permit to Drill for an oil well with a WMP must include the following information in the WMP:

(1) The anticipated initial oil production rate from the oil well and the anticipated production decline over the first 3 years of production;

(2) The anticipated initial oil-well gas production rate from the oil well and the anticipated production decline over the first 3 years of production;

(3) Certification that the operator has a valid, executed gas sales contract to sell to a purchaser 100 percent of the produced oil-well gas, less gas anticipated for use on-lease pursuant to 43 CFR subpart 3178.

(4) Any other information demonstrating the operator's plans to avoid the waste of gas production from any source, including, as appropriate, from pneumatic equipment, storage tanks, and leaks.

(k) A self-certification is a written statement that the operator will be able to capture, as defined in 43 CFR 3179.10, 100 percent of the oil-well gas that the oil well produces. An approved Application for Permit to Drill with a self-certification statement is not subject to 43 CFR 3179.70(a), and all flared gas is an avoidable loss with a royalty obligation, except for emergencies as identified in 43 CFR 3179.83. A self-certification statement applies and is enforceable from the date of first production until the well is plugged and abandoned.

(l) The BLM may take one of the following actions based on the operator's WMP or self-certification:

(1) Approve an administratively and technically complete oil-well application with a WMP subject to conditions for flared gas, as described in 43 CFR 3179.70(a);

(2) Approve an administratively and technically complete oil-well application with a self-certification for oil-well gas capture subject to conditions for flared gas, as described in this paragraph;

(3) Defer action on an oil-well application with a WMP or self-certification statement that is not administratively and technically complete in the interest of preventing waste until such time as the operator is able to amend the application to comply with the requirements in paragraph (j) of this section or this paragraph, as applicable. If the applicant does not address deficiencies in the WMP or the self-certification to comply with the applicable requirements within 2 years of submission of the application, the BLM will disapprove the application.

PART 3170—ONSHORE OIL AND GAS PRODUCTION

■ 3. The authority citation for part 3170 continues to read as follows:

Authority: 25 U.S.C. 396d and 2107; 30 U.S.C. 189, 306, 359, and 1751; and 43 U.S.C. 1732(b), 1733, and 1740.

■ 4. Revise subpart 3179 to read as follows:

Subpart 3179—Waste Prevention and Resource Conservation

Secs.

Subpart 3179—Waste Prevention and Resource Conservation

§ 3179.1 Purpose.

The purpose of this subpart is to implement and carry out the purposes of statutes relating to prevention of waste from Federal and Indian (other than The Osage Nation) oil and gas leases, protection of worker safety, conservation of surface resources, and management of the public lands for multiple use and sustained yield. This subpart supersedes those portions of Notice to Lessees and Operators of Onshore Federal and Indian Oil and Gas Leases, Royalty or Compensation for Oil and Gas Lost (NTL–4A) pertaining to, among other things, flaring and venting of produced gas, unavoidably and avoidably lost gas, and waste prevention.

§ 3179.2 Scope.

(a) Except as provided in provided paragraph (b), this subpart applies to:

(1) All onshore Federal and Indian (other than The Osage Nation) oil and gas leases, units, and communitized areas;

(2) Indian Mineral Development Act (IMDA) agreements, unless specifically excluded in the agreement or unless the relevant provisions of this subpart are inconsistent with the agreement;

(3) Leases and other business agreements and contracts for the development of Tribal energy resources under a Tribal Energy Resource Agreement (TERA) entered into with the Secretary, unless specifically excluded in the lease, other business agreement, or TERA;

(4) Wells, equipment, and operations on State or private tracts that are committed to a federally approved unit

or communitization agreement defined by or established under 43 CFR subpart 3105 or 43 CFR part 3180.

(b) Sections 3179.50, 3179.90, and 3179.100 through 3179.102 apply only to operations and production equipment located on a Federal or Indian surface estate. They do not apply to operations and production equipment on State or private tracts, even where those tracts are committed to a federally approved unit or communitization agreement.

(c) For purposes of this subpart, the term ''lease'' also includes IMDA agreements.

§ 3179.10 Definitions and acronyms.

As used in this subpart, the term:

Automatic ignition system means an automatic ignitor and, where necessary to ensure continuous combustion, a continuous pilot flame.

Capture means the physical containment of natural gas for transportation to market or productive use of natural gas and includes reinjection and royalty-free on-site uses pursuant to subpart 3178.

Compressor station means any permanent combination of one or more compressors that move natural gas at increased pressure through gathering or transmission pipelines, or into or out of storage. This includes, but is not limited to, gathering and boosting stations and transmission compressor stations. The combination of one or more compressors located at a well site, or located at an onshore natural gas processing plant, is not a compressor station.

Gas-to-oil ratio (GOR) means the ratio of gas to oil in the production stream expressed in standard cubic feet of gas per barrel of oil at standard conditions.

Gas well means a well for which the energy equivalent of the gas produced, including its entrained liquefiable hydrocarbons, exceeds the energy equivalent of the oil produced. Unless more specific British thermal unit (Btu) values are available, a well with a gas-to-oil ratio greater than 6,000 standard cubic feet (scf) of gas per barrel of oil is a gas well.

High-pressure flare means an open-air flare stack or flare pit designed for the combustion of natural gas that would normally go to sales.

Leak means a release of natural gas from a component that is not associated with normal operation of the component, when such release is:

(1) A hydrocarbon emission detected by use of an optical-gas-imaging instrument;

(2) At least 500 ppm of hydrocarbon detected using a portable analyzer or other instrument that can measure the quantity of the release; or

(3) A hydrocarbon emission detected via audio, visual, and olfactory means or visible bubbles detected using soap solution. Releases due to normal operation of equipment intended to vent as part of normal operations, such as gas-driven pneumatic controllers and safety-release devices, are not leaks unless the releases exceed the quantities and frequencies expected during normal operations. Releases due to operator errors or equipment malfunctions or from control equipment at levels that exceed applicable regulatory requirements, such as releases from an oil storage tank hatch left open, or an improperly sized combustor, are leaks.

Liquids unloading means the removal of an accumulation of liquid hydrocarbons or water from the wellbore of a completed gas well.

Lost oil or lost gas means produced oil or gas that escapes containment, either intentionally or unintentionally, or is flared before being removed from the lease, unit, or communitized area, and cannot be recovered.

Low-pressure flare means any flare that does not meet the definition of high-pressure flare.

Pneumatic controller means an automated instrument used for maintaining a process condition, such as liquid level, pressure, delta-pressure, or temperature.

§ 3179.11 Severability.

If a court holds any provisions of the regulations in this subpart or their applicability to any person or circumstances invalid, the remainder of this subpart and its applicability to other people or circumstances will not be affected.

§ 3179.30 Incorporation by Reference (IBR).

Certain material is incorporated by reference into this subpart with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the BLM must publish a rule in the **Federal Register**, and the material must be reasonably available to the public. All approved incorporation by reference (IBR) material is available for inspection at the Bureau of Land Management (BLM) and at the National Archives and Records Administration (NARA). Contact Yvette M. Fields with the BLM at: Division of Fluid Minerals, 1849 C Street NW, Washington, DC 20240, telephone 240–712–8358; email *yfields@blm.gov; https://www.blm.gov/programs/energy-and-minerals/oil-and-gas.* The approved material is also available for inspection at all BLM offices with jurisdiction over oil and gas activities. For information on inspecting this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations.html* or email *fr.inspection@nara.gov.* The material may be obtained from the following source:

(a) American Petroleum Institute (API), 200 Massachusetts Ave. NW, Suite 1100, Washington, DC 20001; telephone 202–682–8000. API offers free, read-only access to some of the material at *http://publications.api.org.*

(1) API Manual of Petroleum Measurement Standards Chapter 22.3, Testing Protocol for Flare Gas Metering; First Edition, August 2015 (''API 22.3''), IBR approved for § 3179.71(c).

(2) [Reserved]

(b) [Reserved]

§ 3179.40 Reasonable precautions to prevent waste.

(a) Operators must use all reasonable precautions to prevent the waste of oil or gas developed from the lease.

(b) The Authorized Officer may specify reasonable measures to prevent waste as conditions of approval of an Application for Permit to Drill (APD).

(c) After an APD is approved, the Authorized Officer may order an operator to implement, within a reasonable time, additional reasonable measures to prevent waste at ongoing exploration and production operations.

(d) Reasonable measures to prevent waste may reflect factors including, but not limited to, relevant advances in technology and changes in industry practice.

§ 3179.41 Determining when the loss of oil or gas is avoidable or unavoidable.

For purposes of this subpart:

(a) Lost oil is ''unavoidably lost'' if the operator has taken reasonable steps to avoid waste, and the operator has complied fully with applicable laws, lease terms, regulations, provisions of a previously approved operating plan, and other written orders of the BLM.

(b) Lost gas is ''unavoidably lost'' if the operator has taken reasonable steps to avoid waste, the operator has complied fully with applicable laws, lease terms, regulations, provisions of a previously approved operating plan, and other written orders of the BLM; and the gas is lost from the following operations or sources:

(1) Well drilling, subject to the limitations in § 3179.80;

(2) Well completion and recompletion flaring allowances in § 3179.81;

(3) Subsequent well tests, subject to the limitations in § 3179.82;

(4) Exploratory coalbed methane well dewatering;

(5) Emergency situations, subject to the limitations in § 3179.83;

(6) Normal operating losses from a natural-gas-activated pneumatic controller or pump;

(7) Normal operating losses from an oil storage tank or other low-pressure production vessel that is in compliance with §§ 3179.90 and 3174.5(b);

(8) Well venting in the course of downhole well maintenance and/or liquids unloading performed in compliance with § 3179.91;

(9) Leaks, when the operator has complied with the LDAR requirements in §§ 3179.100 and 3179.101;

(10) Facility and pipeline maintenance, such as when an operator must blow-down and depressurize equipment to perform maintenance or repairs;

(11) Pipeline capacity constraints, midstream processing failures, or other similar events that prevent oil-well gas from being transported through the connected pipeline, subject to the limitations in the WMP or self-certification for Applications for Permit to Drill approved after June 10, 2024 or § 3179.70, as applicable;

(12) Flaring of gas from which at least 50 percent of natural gas liquids have been removed on-lease and captured for market, if the operator has notified the BLM through a Sundry Notices and Report on Wells, Form 3160–5 (Sundry Notice) that the operator is conducting such capture and the inlet of the equipment used to remove the natural gas liquids will be a Facility Measurement Point (FMP); or

(13) Flaring of gas from a well that is not connected to a gas pipeline, to the extent that such flaring was authorized by the BLM in the approval of the APD.

(c) Lost oil or gas that is not ''unavoidably lost'' as defined in paragraphs (a) and (b) of this section is ''avoidably lost.''

§ 3179.42 When lost production is subject to royalty.

(a) Royalty is due on all avoidably lost oil or gas.

(b) Royalty is not due on any unavoidably lost oil or gas.

§ 3179.43 Data submission and notification requirements.

(a) Table 1 is a summary of the Sundry Notice requirements in this subpart.

TABLE 1 TO PARAGRAPH (a)—NOTIFICATION VIA SUNDRY NOTICE REQUIREMENTS

Sundry notice requirements	Reference
Flaring of gas following removal of ≥50 percent of the natural gas liquids from the gas stream on-lease	§ 3179.41(b)(12).
Other gas sample location for flare approved by the AO	§ 3179.71(d)(3) and (e)(2).
Unavoidable/avoidable determination of loss of oil and/or gas while drilling for loss of well control event	§ 3179.80.
Extension of time limit or volumetric limit for well completion or recompletion flaring, or exploratory coalbed methane dewatering flaring.	§ 3179.81(e).
Extension of time limit for well testing subsequent to initial completion	§ 3179.82.
Within 45 days of start of an emergency, estimate the volume flared or vented beyond the first 48 hours of the emergency.	§ 3179.83(c).
Delay of leak repair beyond 30 calendar days with good cause	§ 3179.101(b).

(b) Table 2 summarizes the locations in this subpart that require an operator to provide information to the authorized officer upon request.

TABLE 2 TO PARAGRAPH (b)—INFORMATION REQUIRED AT THE REQUEST OF THE AO

Information required at the request of the AO	Reference
Ultrasonic meter flare gas testing report	§ 3179.71(c)(2)(i).
Ultrasonic meter manufacturer's specifications including installation and operation specifications	§ 3179.71(c)(2)(ii).
Recordkeeping for vented or flared gas events	§ 3179.72(c).
Recordkeeping for leak detection and repair	§ 3179.102(a).

(c) Table 3 summarizes the initial LDAR program submission and subsequent annual reporting.

TABLE 3 TO PARAGRAPH (c)—LDAR PROGRAM

Information required to be sent to the BLM State Office	Reference
First submission of a leak detection and repair program to the BLM for review	§ 3179.100(b) and (d).
Annual review and update of the leak detection and repair program to the BLM	§ 3179.100(e).

§ 3179.50 Safety.

(a) The operator must flare, rather than vent, any gas that is not captured, except when:

(1) Flaring the gas is technically infeasible, such as when volumes are too small to flare;

(2) Under emergency conditions, the loss of gas is uncontrollable, or venting is necessary for safety;

(3) The gas is vented through normal operation of a natural-gas-activated pneumatic controller or pump;

(4) The gas is vented from an oil storage tank;

(5) The gas is vented during downhole well maintenance or liquids unloading activities performed in compliance with § 3179.91;

(6) The gas is vented through a leak;

(7) Venting is necessary to allow non-routine facility and pipeline maintenance, such as when an operator must, upon occasion, blow-down and depressurize equipment to perform maintenance or repairs; or

(8) A release of gas is necessary and flaring is prohibited by Federal, State, local, or Tribal law or regulation, or enforceable permit term.

(b) All flares or combustion devices must be equipped with an automatic ignition system or an on-demand ignition system. Upon discovery of a flare that is venting instead of combusting gas, the BLM may subject the operator to an immediate assessment of $1,000 per violation.

(c) The flare must be placed a sufficient distance from the tanks' containment area and any other significant structures or objects so that the flare does not create a safety hazard. The prevailing wind direction must be taken into consideration when locating the flare.

§ 3179.60 Gas-well gas.

Gas-well gas may not be flared or vented, except where it is unavoidably lost pursuant to § 3179.41(b).

§ 3179.70 Oil-well gas.

(a) Where oil-well gas must be flared due to pipeline capacity constraints, midstream processing failures, or other similar events that prevent produced gas from being transported through the connected pipeline, the oil-well gas is ''unavoidably lost'' for the purposes of 43 CFR 3162.3–1(j), 43 CFR 3179.41(b)(11), and 3179.42, subject to the following limits:

(1) Flaring of 0.08 Mcf per barrel of oil produced per month between July 1, 2024 and July 1, 2025.

(2) The flaring limit of 0.07 Mcf per barrel of oil produced per month will begin on July 1, 2025.

(3) The flaring limit of 0.06 Mcf per barrel of oil produced per month will begin on July 1, 2026.

(4) The flaring limit of 0.05 Mcf per barrel of oil produced per month will begin on July 1, 2027, and remain at this level.

(b) Where substantial volumes of oil-well gas are flared the BLM may order the operator to curtail or shut-in production as necessary to avoid the undue waste of Federal or Indian gas. The BLM will not issue a shut-in or curtailment order under this paragraph unless the operator has reported flaring in excess of 1 Mcf per barrel of oil produced per month for 3 consecutive months and the BLM confirms that flaring is ongoing.

(c) If a BLM order under paragraph (b) of this section would adversely affect production of oil or gas from non-Federal and non-Indian mineral interests (*e.g.,* production allocated to a mix of Federal, State, Indian, and private leases under a unit agreement), the BLM may issue such an order only to the extent that the BLM is authorized to regulate the rate of production under the governing unit or communitization agreement. In the absence of such authorization, the BLM will contact the State regulatory authority having jurisdiction over the oil and gas production from the non-Federal and non-Indian interests and request that that entity take appropriate action to limit the waste of gas.

§ 3179.71 Measurement of flared oil-well gas volume.

(a) The operator may commingle flared gas from more than one lease, unit PA, or CA to a common high-pressure flare without BLM approval, subject to the allocation requirement in paragraph (h). The site facility diagram required under § 3173.11 must indicate that the high-pressure flare is a common, commingled flare and list the leases, unit PAs, or CAs contributing gas to the common flare.

(b) The operator must measure flared gas for high-pressure flares for volumes greater than 1,050 Mcf per month above the averaging period. For high-pressure flares measuring less than or equal to 1,050 Mcf per month over the averaging period and for low-pressure flares, operators may estimate the volume flared, as described in paragraph (h) of this section.

(c) High-pressure flares requiring measurement must use either orifice plates and orifice meter tubes, or ultrasonic meters. High-pressure flare measurement systems must meet the following requirements:

(1) Orifice metering systems must comply with the low-volume measurement requirements in § 3175.80, low-volume electronic gas measurement requirements in § 3175.100, and the low-volume gas sampling and analysis requirements in § 3175.110 with the gas sampling location requirements provided in paragraphs (d) or (e) of this section.

(2) Ultrasonic metering systems must comply with the following requirements:

(i) Each ultrasonic meter make and model must be tested for flare use. Flare gas meter testing must be conducted and reported pursuant to API 22.3 (incorporated by reference, see § 3179.30) and results must be made available to the AO upon request.

(ii) Ultrasonic meters must be installed and operated for flare use according to the manufacturer's specifications and those specifications must be provided to the AO upon request.

(iii) Ultrasonic metering systems must comply with the low-volume electronic gas measurement requirements in § 3175.100, and the low-volume gas sampling analysis requirements in § 3175.110, except for the gas sampling requirements in (d) or (e) of this section.

(3) Operators must evaluate the production facility to determine which type of flare measurement is safe for the facility.

(d) The gas sample must be taken from one of the following locations when the high-pressure flare is measuring a single lease, unit PA, or CA:

(1) At the flare meter;

(2) At the gas FMP, if there is a gas FMP at the well site and the gas composition is the same as that of the flare-meter gas; or

(3) At another location approved by the AO with a Sundry Notice submission.

(e) The gas sample must be taken from one of the following locations for a common high-pressure flare that measures more than one lease, unit PA, or CA;

(1) At the flare meter; or

(2) At another location approved by the AO with a Sundry Notice submission.

(f) Appropriate meters must be installed at all high-pressure flares pursuant to paragraph (c), and gas sampling must be taken from the appropriate location pursuant to paragraphs (d) or (e) according to the following phase-in timeline:

TABLE 1 TO PARAGRAPH (f)—DEADLINE FOR COMPLIANCE WITH HIGH-PRESSURE FLARE MEASUREMENT, AND GAS SAMPLING LOCATION

Flare flow category	Deadline for measurement compliance for high-pressure flares and gas sampling location
≥30,000 Mcf per month	December 10, 2024.
<30,000 Mcf per month and ≥6,000 Mcf per month	June 10, 2025.
<6,000 Mcf per month and ≥1,050 Mcf per month	December 10, 2025.
<1,050 Mcf per month	Not applicable.

(g) When the flared volume for a high-pressure flare is less than or equal to 1,050 Mcf per month and for low-pressure flares, the flared volume may be estimated, or measured. Estimated flared gas volumes must be based on production reported on the ONRR OGORs over the previous 6 months and calculated at follows:

Equation 1 to Paragraph (g)

$$\sum_{m=1}^{6} \frac{V_g}{V_o} = GOR_r$$

Equation 2 to Paragraph (g)

$$V_f = \left(V_{op} \times GOR_r\right) - V_s$$

Where:

m = The previous 6 months of flaring

V_g = The total volume of gas produced from oil wells in the previous 6 months as reported on the OGOR

V_o = The total volume of oil produced from oil wells in the previous 6 months as reported on the OGOR

GOR_r = The gas-to-oil ratio for the previous 6 months of production as reported on the OGOR

V_{op} = The total oil produced from oil wells while flaring

V_s = The total gas volume produced and sent through a gas FMP from oil wells while flaring

V_f = The estimated gas flared from oil wells to be reported on the OGOR

(h) If a flare is combusting gas that is combined across multiple leases, unit PAs, or CAs, the operator may measure the gas at a single point at the flare and allocate flared volumes based on the oil production while flaring from each lease, unit PA, or CA as follows:

Equation 3 to Paragraph (h)

$$VF_i = VF_t \cdot \frac{NSV_{FMP_i}}{\sum_{i=1}^{n} NSV_{FMP_i}}$$

Where:

n = the total number of FMPs sending gas to a common flare

VF_i = The volume flared from the i^{th} lease, unit PA, or CA sent to a common flare

VF_t = The total volume flared from a common flare

NSV_{FMPi} = The net standard volume of oil from the FMP for the i^{th} lease, unit PA, or CA

(i) Measurement points for flared volumes are not FMPs for the purposes of subpart 3175.

§ 3179.72 Required reporting and recordkeeping of vented and flared gas volumes.

(a) The operator must report all flared volumes, both avoidable and unavoidable losses, using all applicable ONRR reporting requirements.

(b) The operator must report the flared gas quality in Btu on the OGOR based on the gas analysis required in § 3179.71(d) or (e). The operator must report the same Btu content from a common flare on the OGOR for all the leases, unit PAs, or CAs contributing gas to the flare based on the gas sample analysis.

(c) Starting on September 10, 2024,operators must maintain the following records and make them available to the AO upon request:

(1) Date and time when oil or gas-well flaring begins and ends, the reason for flaring and whether the well, lease, unit PA, or CA was shut-in or returned to sales when the flaring stopped;

(2) Date and time when an emergency begins and ends, the reason for the emergency, whether the gas was vented or flared, and whether the well, lease, unit PA, or CA was shut-in or returned to sales when the emergency ended;

(3) Date and time when manual downhole liquids unloading operation or well purging begins and ends, and whether the well was shut-in or returned to sales at the end of the well maintenance.

§ 3179.73 Prior determinations regarding royalty-free flaring.

(a) Approvals to flare royalty free, which are in effect as of the effective date of this rule, will continue in effect until November 1, 2024. After that date, the royalty-bearing status of all flaring will be determined according to the provisions of this subpart.

(b) The provisions of this subpart do not affect any determination made by the BLM before or after June 10, 2024 [INSERT EFFECTIVE DATE OF THE FINAL RULE], with respect to the royalty-bearing status of flaring that occurred prior to June 10, 2024.

Flaring and Venting Gas During Drilling and Production Operations

§ 3179.80 Loss of well control while drilling.

If, during drilling, gas is lost as a result of loss of well control, the operator must notify the BLM within 24 hours of the start of the loss of the well control event and submit to the BLM a Sundry Notice within 15 days following the conclusion of the event describing the loss of well control. The BLM will determine whether the loss of well control was due to operator negligence. Oil or gas lost as a result of loss of well control is avoidably lost if the BLM determines that the loss of well control was due to operator negligence. The BLM will notify the operator in writing when it determines whether oil or gas was lost due to operator negligence, and whether such loss will qualify as an avoidable loss.

§ 3179.81 Well completion or recompletion flaring allowance.

(a) Gas flared following well completion or recompletion is royalty-free under §§ 3179.41(b)(2) and 3179.42(b) until one of the following occurs:

(1) Thirty days have passed since the beginning of the flowback following completion or recompletion, except as provided in paragraphs (b) and (d) of this section;

(2) The operator has flared 20,000 Mcf of gas; or

(3) Flowback has been routed to the production separator.

(b) The BLM may extend the period specified in paragraph (a)(1) of this section, not to exceed an additional 60 days, based on flowback delays caused by well or equipment problems.

(c) The BLM may increase the limit specified in paragraph (a)(2) of this section by up to an additional 30,000 Mcf of gas for exploratory oil wells in remote locations where additional flaring may be needed in advance of construction of pipeline infrastructure.

(d) During the dewatering and initial evaluation of an exploratory coalbed methane well, the 30-day period specified in paragraph (a)(1) of this section is extended to 90 days. The BLM may approve up to two extensions of this evaluation period, not to exceed 90 days per each approval.

(e) The operator must submit its request for an extension under paragraphs (b), (c), or (d) of this section using a Sundry Notice.

§ 3179.82 Subsequent well tests for an existing completion.

During well tests subsequent to the initial completion or recompletion, the operator may flare gas royalty free under § 3179.41(b)(3) for no more than 24 hours, unless the BLM approves or requires a longer period. The operator must submit any such request using a Sundry Notice.

§ 3179.83 Emergencies.

(a) An operator may flare or, if flaring is not feasible due to the emergency situation, vent gas royalty-free under § 3179.41(b)(5) for no longer than 48 hours during an emergency situation. For purposes of this subpart, an ''emergency situation'' is a temporary, infrequent, and unavoidable situation in which the loss of gas is necessary to avoid a danger to human health, safety, or the environment.

(b) The following examples do not constitute emergency situations for the purposes of royalty assessment:

(1) Recurring failures of a single piece of equipment;

(2) The operator's failure to install appropriate equipment of a sufficient capacity to accommodate the production conditions;

(3) Failure to limit production when the production rate exceeds the capacity of the related equipment, pipeline, or gas plant, or exceeds sales contract volumes of oil or gas;

(4) Scheduled maintenance; or

(5) A situation caused by operator negligence.

(c) Within 45 days of the start of the emergency, the operator must estimate and report to the AO by a Sundry Notice the volumes flared or vented beyond the timeframe specified in paragraph (a) of this section, and details describing the emergency event, measures taken to prevent the emergency event, and actions taken to control the emergency event so that the BLM is able to determine if the loss of oil or gas is an unavoidable loss pursuant to § 3179.41.

Gas Flared or Vented From Equipment and During Well Maintenance Operations

§ 3179.90 Oil storage tank vapors.

(a) The hatch on an oil storage tank may be open only to the extent necessary to conduct production and measurement operations. All oil storage tanks, hatches, connections, and other access points must be vapor tight (*i.e.*, capable of holding pressure differential at the installed pressure-relieving or vapor-recovery device's settings). Upon discovery of an oil storage tank hatch that has been left open or unlatched, and unattended, the BLM will impose an immediate assessment of $1,000 on the operator.

(b) Where practical and safe, gas released from an oil storage tank must be flared rather than vented. An operator may commingle vapors from multiple storage tanks to a single flare without prior approval from the BLM.

§ 3179.91 Downhole well maintenance and liquids unloading.

(a) Gas vented or flared during downhole well maintenance and well purging is royalty free for a period not to exceed 24 hours per event, provided that the requirements of paragraphs (b) through (d) of this section are met. Gas vented or flared from a plunger lift system and/or an automated well control system is royalty free, provided the requirements of paragraphs (b) and (c) of this section are met.

(b) The operator must minimize the loss of gas associated with downhole well maintenance and liquids unloading, consistent with safe operations.

(c) For wells equipped with a plunger lift system and/or an automated well control system, minimizing gas loss under paragraph (b) of this section includes optimizing the operation of the system to minimize gas losses to the extent possible, consistent with removing liquids that would inhibit proper function of the well.

(d) For any liquids unloading by manual well purging, the operator must ensure that the person conducting the well purging remains present on-site throughout the unloading to end it as soon as practical, thereby minimizing any venting to the atmosphere.

(e) For purposes of this section, ''well purging'' means blowing accumulated liquids out of a wellbore by reservoir pressure, whether manually or by an automatic control system that relies on real-time pressure or flow, timers, or other well data, where the gas is vented to the atmosphere. Well purging does not apply to wells equipped with a plunger lift system.

§ 3179.92 Size of production equipment.

Production and processing equipment must be of sufficient size to accommodate the volumes of production expected to occur at the lease site.

Leak Detection and Repair (LDAR)

§ 3179.100 Leak detection and repair program.

(a) Pursuant to paragraph (b) of this section, the operator must maintain a BLM administrative statewide LDAR program designed to prevent the waste of Federal or Indian gas.

(b) Operators must submit a statewide LDAR program to the BLM state office with jurisdiction over the production for review. The LDAR program must cover operations and production equipment located on a Federal or Indian oil and gas lease and not operations and production equipment located on State or private tracts, even though those tracts are committed to a federally approved unit PA or CA. When there is a change of operator, the new operator must update the LDAR program on the annual update and revision timeline. Operators must submit the LDAR program in writing for review until such time as the BLM's electronic filing system is capable of receiving LDAR program submissions. At minimum, the LDAR program must contain the following information, as applicable:

(1) Identification of the leases, unit PAs, and CAs by geographic State for all States within BLM's administrative State boundaries to which the LDAR program applies;

(2) Identification of the method and frequency of leak detection inspection used at the lease, unit PA, or CA. Acceptable methods, as well as other methods approved by the BLM, and frequency include the following:

(i) Well pads with only wellheads and no production equipment or storage must include quarterly AVO inspections for leak detection;

(ii) Well pads with any production and processing equipment and oil storage must include AVO inspections every other month and quarterly optical gas imaging for leak detection; and

(iii) Other leak detection inspection methods and frequency acceptable to the BLM (*e.g.,* continuous monitoring).

(3) Identification of the operator's recordkeeping process for leak detection and repair pursuant to § 3179.102.

(c) The BLM will review the operator's LDAR program and notify the operator if the BLM deems the program to be inadequate. The notification will explain the basis for the BLM's determination, identify the plan's inadequacies, describe any additional measures that could address the inadequacies, and provide a reasonable time frame in which the operator must submit a revised LDAR program to the BLM for review.

(d) For leases in effect on June 10, 2024, the operator must submit a statewide LDAR program to the state office no later than December 10, 2025.

(e) Operators must review and update submitted LDAR programs on an annual basis in the month in which the operator submitted the first LDAR program to ensure that the identified leases, unit PAs, and CAs, leak detection methods, and frequency of inspections are current. If the operator's LDAR program requires no changes, then the operator must notify the BLM state office that the LDAR program submitted and reviewed by the BLM remains in effect. Any updates to the LDAR program must be submitted in writing to the BLM state office for review until such time as the BLM's electronic system is capable of receiving the annual LDAR updates.

§ 3179.101 Repairing leaks.

(a) The operator must repair any leak as soon as practicable, and in no event later than 30 calendar days after discovery, unless good cause exists to delay the repair for a longer period. Good cause for delay of repair exists if the repair (including replacement) is technically infeasible (including unavailability of parts that have been ordered), would require a pipeline blowdown, a compressor station shutdown, or a well shut-in, or would be unsafe to conduct during operation of the unit.

(b) If there is good cause for delaying the repair beyond 30 calendar days, the operator must notify the BLM of the cause by Sundry Notice and must complete the repair at the earliest opportunity, such as during the next compressor station shutdown, well shut-in, or pipeline blowdown. In no case will the BLM approve a delay of more than 2 years.

(c) Not later than 30 calendar days after completion of a repair, the operator must verify the effectiveness of the repair by conducting a follow-up inspection using an appropriate instrument or a soap bubble test under Section 8.3.3 of EPA Method 21—Determination of Volatile Organic Compound Leaks (40 CFR Appendix A–7 to part 60).

(d) If the repair is not effective, the operator must complete additional repairs within 15 calendar days and conduct follow-up inspections and repairs until the leak is repaired.

§ 3179.102 Required recordkeeping for leak detection and repair.

(a) The operator must maintain the following records for the period required under 43 CFR 3162.4–1(d) and make them available to the AO upon request:

(1) For each inspection required under § 3179.100 of this subpart, documentation of:

(i) The date of the inspection; and

(ii) The site where the inspection was conducted;

(2) The monitoring method(s) used to determine the presence of leaks;

(3) A list of leak components on which leaks were found;

(4) The date each leak was repaired; and

(5) The date and result of the follow-up inspection(s) required under § 3179.101(c).

(b) With the annual review and update of the LDAR program under § 3179.100(e) the operator must provide to the BLM state office an annual summary report on the previous year's inspection activities that includes:

(1) The number of sites inspected;

(2) The total number of leaks identified, categorized by the type of component;

(3) The total number of leaks that were not repaired from the previous LDAR program year due to good cause and an estimated date of repair for each leak.

(c) AVO checks are not required to be documented unless they find a leak requiring repair.

Immediate Assessments

§ 3179.200 Immediate assessments

Certain instances of noncompliance warrant the imposition of immediate assessments upon the violation, as prescribed in the following table. Imposition of any of these assessments does not preclude other appropriate enforcement actions under other applicable regulations.

TABLE 1 TO § 3179.200—VIOLATIONS SUBJECT TO IMMEDIATE ASSESSMENT

Violation:	Assessment amount per violation:
1. Flare is not combusting gas sent to flare. As required in § 3179.50(b)	$1,000
2. Storage tank hatch is open or unlatched, and unattended in violation of § 3179.90	1,000

This action by the Principal Deputy Assistant Secretary is taken pursuant to an existing delegation of authority.

Steven H. Feldgus,

Principal Deputy Assistant Secretary, Land and Minerals Management.

[FR Doc. 2024–06827 Filed 4–9–24; 8:45 am]

BILLING CODE 4331–29–P

FEDERAL REGISTER

Vol. 89 Wednesday,
No. 70 April 10, 2024

Part IV

Department of Transportation

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 171, 172, 173, et al.
Hazardous Materials: Harmonization With International Standards; Final Rule

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 171, 172, 173, 175, 176, 178, and 180

[Docket No. PHMSA–2021–0092 (HM–215Q)]

RIN 2137–AF57

Hazardous Materials: Harmonization With International Standards

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: PHMSA is amending the Hazardous Materials Regulations (HMR) to maintain alignment with international regulations and standards by adopting various amendments, including changes to proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, air transport quantity limitations, and vessel stowage requirements. PHMSA is also withdrawing the unpublished November 28, 2022, Notice of Enforcement Policy Regarding International Standards on the use of select updated international standards in complying with the HMR during the pendency of this rulemaking.

DATES:

Effective date: This rule is effective May 10, 2024.

Voluntary compliance date: January 1, 2023.

Delayed compliance date: April 10, 2025.

Incorporation by reference date: The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register on May 10, 2024.

FOR FURTHER INFORMATION CONTACT: Steven Andrews, Standards and Rulemaking, or Candace Casey, Standards and Rulemaking, at 202–366–8553, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, East Building, 2nd Floor, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Executive Summary

As discussed in further detail in this final rule (*see* V. Section-by-Section Review of Amendments), the Pipeline and Hazardous Materials Safety Administration (PHMSA) amends certain sections of the Hazardous Materials Regulations (HMR; 49 CFR parts 171 through 180) to maintain alignment with international regulations and standards by adopting various amendments, including changes to proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, air transport quantity limitations, and vessel stowage requirements. Furthermore, this final rule addresses the 21 sets of comments received in response to the Notice of Proposed Rulemaking (NPRM) [1] published in May 2023. Overall, the comments to the NPRM were generally supportive of the proposals made; however, PHMSA did receive a few comments seeking further clarification or revisions to the NPRM, which PHMSA also addresses in this final rule. PHMSA expects that the adoption of the regulatory amendments in this final rule will facilitate transportation efficiency while maintaining the high safety standard currently achieved under the HMR. For example, the final rule will update several International Organization for Standards (ISO) standards; revise requirements for the shipping of lithium batteries; and set specification for the construction of Intermediate Bulk Containers (IBCs) constructed from recycled resins. This final rule will also align HMR requirements with anticipated increases in the volume of lithium batteries transported in interstate commerce from electrification of the transportation and other economic sectors. PHMSA also notes that the harmonization of the HMR with international consensus standards could reduce delays and interruptions of hazardous materials during transportation. The amendments may also lower greenhouse gas (GHG) emissions and safety risks, including risks to minority, low income, underserved, and other disadvantaged populations, and communities in the vicinity of interim storage sites and transportation arteries and hubs. The following list summarizes the more noteworthy amendments set forth in this final rule:

- *Incorporation by Reference:* PHMSA is incorporating by reference updated versions of the following international hazardous materials regulations and standards: the 2023–2024 edition of the International Civil Aviation Organization Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions); Amendment 41–22 to the International Maritime Dangerous Goods Code (IMDG Code); and the 22nd revised edition of the United Nations Recommendations on the Transport of Dangerous Goods—Model Regulations (UN Model Regulations).
- *Hazardous Materials Table:* PHMSA is amending the Hazardous Materials Table (HMT; 49 CFR 172.101) to add, revise, or remove certain proper shipping names (PSNs), hazard classes, packing groups (PGs), special provisions (SPs), packaging authorizations, bulk packaging requirements, and passenger and cargo-only aircraft maximum quantity limits.
- *Polymerizing Substances:* In 2017—as part of the HM–215N final rule [2]—PHMSA added four new Division 4.1 (flammable solid) entries for polymerizing substances to the HMT and added defining criteria, authorized packagings, and safety requirements, including, but not limited to, stabilization methods and operational controls into the HMR. These changes remained in effect until January 2, 2019, while PHMSA used the interim period to review and research the implications of the polymerizing substance amendments. In 2020—as part of the HM–215O [3] final rule—PHMSA extended the date the provisions remained in effect from January 2, 2019, to January 2, 2023, to allow for the additional research to be completed on the topic. In this final rule, PHMSA is removing the phaseout date (January 2, 2023) from the transport provisions for

[1] 88 FR 34568 (May 30, 2023).

[2] 82 FR 15796 (Mar. 30, 2017).

[3] 85 FR 27810 (May 11, 2020).

polymerizing substances to allow for continued use of the provisions.

• *Cobalt dihydroxide powder containing not less than 10 percent respirable particles:* PHMSA is adding a new entry to HMT, ''UN3550 Cobalt dihydroxide powder, *containing not less than 10% respirable particles,*'' and corresponding packaging provisions. Cobalt is a key strategic mineral used in various advanced medical and technical applications around the world, including various types of batteries. Historically, this hazardous material has been classified and transported as a Class 9 material under ''UN3077, Environmentally hazardous substance, solid, n.o.s.;'' however, testing required under Registration, Evaluation, Authorisations and Restriction of Chemicals (REACH) regulations [4] for comprehensive GHS testing determined that this material poses an inhalation toxicity hazard. Following this determination, the 22nd revised edition of the UN Model Regulations developed a new entry on the Dangerous Goods List (DGL) and packaging authorizations specifically for this hazardous material to facilitate continued global transport of this material. In this final rule, PHMSA is adding a new entry for cobalt dihydroxide containing not less than 10 percent respirable particles and assigning it UN3550 in the HMT, in addition to adding packaging provisions, including the authorization to transport this material in flexible IBCs. PHMSA expects these provisions will facilitate the continued transport of this material and keep global supply chains open. *See* 172.101 of the V. Section-by-Section Review of Amendments for additional discussion of these amendments.

• *Lithium Battery Exceptions:* PHMSA is removing the exceptions provided for small lithium cells and batteries for transportation by aircraft. This is consistent with the elimination of similar provisions in the ICAO Technical Instructions. *See* 173.185 of the V. Section-by-Section Review of Amendments for additional discussion of these amendments.

All the amendments are expected to maintain the HMR's high safety standard for the public and the environment. Additionally, PHMSA anticipates that there are safety benefits to be derived from improved compliance related to consistency amongst domestic and international regulations. As further explained in the final regulatory impact analysis (RIA), PHMSA expects that the benefits of each of the amendments (both separately and in the aggregate) in this final rule justify any associated compliance costs. PHMSA estimates that the annualized quantified net cost savings of this rulemaking, using a two percent discount rate, are approximately $6.3 to $14.7 million per year.

II. Background

The Federal Hazardous Materials Transportation Law (49 U.S.C. 5101, *et seq.*) directs PHMSA to participate in relevant international standard-setting bodies and encourages alignment of the HMR with international transport standards, as consistent with promotion of safety and the public interest. *See* 49 U.S.C. 5120. This statutory mandate reflects the importance of international standard-setting activity, in light of the globalization of commercial transportation of hazardous materials. Harmonization of the HMR with those efforts can reduce the costs and other burdens of complying with multiple or inconsistent safety requirements among nations. Consistency between the HMR and current international standards can also enhance safety by:

• Ensuring that the HMR are informed by the latest best practices and lessons learned.

• Improving understanding of, and compliance with, pertinent requirements.

• Facilitating the flow of hazardous materials from their points of origin to their points of destination, thereby avoiding risks to the public and the environment from release of hazardous materials due to delays or interruptions in the transportation of those materials.

• Enabling consistent emergency response procedures in the event of a hazardous materials incident.

PHMSA participates in the development of international regulations and standards for the transportation of hazardous materials. It also adopts within the HMR international consensus standards and regulations consistent with PHMSA's safety mission. PHMSA reviews and evaluates each international standard it considers for incorporation within the HMR on its own merits, including the effects on transportation safety, the environmental impacts, and any economic impact. PHMSA's goal is to harmonize with international standards without diminishing the level of safety currently provided by the HMR or imposing undue burdens on the regulated community.

In final rule HM–181,[5] PHMSA's predecessor—the Research and Special Programs Administration (RSPA)—comprehensively revised the HMR for greater consistency with the UN Model Regulations. The UN Model Regulations constitute a set of recommendations issued by the United Nations Sub-Committee of Experts (UNSCOE) on the Transport of Dangerous Goods and on the Globally Harmonized System of Classification and Labelling of Chemicals (GHS). The UN Model Regulations are amended and updated biennially by the UNSCOE and serve as the basis for national, regional, and international modal regulations, including the ICAO Technical Instructions and IMDG Code.

PHMSA has evaluated recent updates to the international standards, including review of numerous updated standards for the design, manufacture, testing, and use of packagings, and is revising the HMR to adopt changes consistent with revisions to the 2023–2024 edition of the ICAO Technical Instructions, Amendment 41–22 to the IMDG Code, and the 22nd revised edition of the UN Model Regulations, all of which were published by or in effect on January 1, 2023,[6] while also ensuring the changes are consistent with PHMSA's safety mission. Consequently, PHMSA is incorporating by reference these revised international regulations, several new or updated ISO standards, and a new Organization for Economic Co-operation and Development (OECD) standard. The regulations and standards incorporated by reference are authorized for use for domestic transportation, under specific conditions, in part 171, subpart C of the HMR.

Lastly, PHMSA issued a Notice of Enforcement Policy Regarding International Standards [7] on November 28, 2022, stating that while PHMSA was considering the 2023–2024 Edition of the ICAO Technical Instructions and Amendment 41–22 to the IMDG Code for potential adoption into the HMR, PHMSA and other federal agencies that enforce the HMR—*e.g.,* the Federal Railroad Administration, the Federal Aviation Administration (FAA), the Federal Motor Carrier Safety Administration, and the United States Coast Guard—would not take enforcement action against any offeror or carrier who uses these standards as an alternative to complying with current HMR requirements when all or part of

[4] Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006.

[5] 55 FR 52401 (Dec. 21, 1990).

[6] Amendment 41–22 of the IMDG Code became mandatory on January 1, 2024. Voluntary compliance began on January 1, 2023.

[7] PHMSA, Notice of Enforcement Policy Regarding International Standards (Nov. 28, 2022), *https://www.phmsa.dot.gov/regulatory-compliance/phmsa-guidance/phmsa-notice-enforcement-policy-regarding-international.*

the transportation is by air with respect to the ICAO Technical Instructions, or by vessel with respect to the IMDG Code. In addition, that Notice stated PHMSA, and its modal partners, would not take enforcement action against any offeror or carrier who offers or accepts for domestic or international transportation by any mode packages marked or labeled in accordance with those updated standards. PHMSA now withdraws its November 28, 2022, Notice of Enforcement Policy Regarding International Standards as of the effective date of this final rule.

III. Incorporation by Reference Discussion Under 1 CFR Part 51

According to the Office of Management and Budget (OMB), Circular A–119, ''*Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities,*'' government agencies must use voluntary consensus standards wherever practical in the development of regulations.

PHMSA currently incorporates by reference into the HMR all or parts of numerous standards and specifications developed and published by standard development organizations (SDO). In general, SDOs update and revise their published standards every two to five years to reflect modern technology and best technical practices. The National Technology Transfer and Advancement Act of 1995 (NTTAA; Pub. L. 104–113) directs federal agencies to use standards developed by voluntary consensus standards bodies in lieu of government-written standards whenever possible. Voluntary consensus standards bodies develop, establish, or coordinate technical standards using agreed-upon procedures. OMB issued Circular A–119 to implement section 12(d) of the NTTAA relative to the utilization of consensus technical standards by federal agencies. This circular provides guidance for agencies participating in voluntary consensus standards bodies and describes procedures for satisfying the reporting requirements in the NTTAA. Accordingly, PHMSA is responsible for determining which standards currently referenced in the HMR should be updated, revised, or removed, and which standards should be added to the HMR. Revisions to materials incorporated by reference in the HMR are handled via the rulemaking process, which allows for the public and regulated entities to provide input. During the rulemaking process, PHMSA must also obtain approval from the Office of the Federal Register to incorporate by reference any new materials. The Office of the Federal Register issued a rulemaking [8] that revised 1 CFR 51.5 to require that an agency detail in the preamble of an NPRM the ways the materials it proposes to incorporate by reference are reasonably available to interested parties, or how the agency worked to make those materials reasonably available to interested parties. Changes to the materials incorporated by reference in the HMR are discussed in detail in the § 171.7 discussion in ''V. Section-by-Section Review of Amendments'' section of this document.''

IV. Comment Discussion

In response to the NPRM, PHMSA received 21 sets of comments from the following organizations and other interested parties:

American Association for Laboratory Accreditation (A2LA)	*https://www.regulations.gov/comment/PHMSA-2021-0092-0011.*
Anonymous	*https://www.regulations.gov/comment/PHMSA-2021-0092-0004.*
Airline Pilots Association International (ALPA)	*https://www.regulations.gov/comment/PHMSA-2021-0092-0019.*
Compressed Gas Association (CGA)	*https://www.regulations.gov/comment/PHMSA-2021-0092-0010.*
Council on Safe Transportation of Hazardous Articles (COSTHA)	*https://www.regulations.gov/comment/PHMSA-2021-0092-0015.*
Dangerous Goods Advisor	*https://www.regulations.gov/comment/PHMSA-2021-0092-0024.*
Dangerous Goods Advisory Council (DGAC)	*https://www.regulations.gov/comment/PHMSA-2021-0092-0009.*
Dow Chemical Company	*https://www.regulations.gov/comment/PHMSA-2021-0092-0014.*
Entegris	*https://www.regulations.gov/comment/PHMSA-2021-0092-0006.*
Entegris	*https://www.regulations.gov/comment/PHMSA-2021-0092-0005.*
Entegris	*https://www.regulations.gov/comment/PHMSA-2021-0092-0007.*
Entegris	*https://www.regulations.gov/comment/PHMSA-2021-0092-0021.*
Entegris	*https://www.regulations.gov/comment/PHMSA-2021-0092-0018.*
Hexagon Digital Wave, LLC	*https://www.regulations.gov/comment/PHMSA-2021-0092-0022.*
Household Commercial Products Association (HCPA)	*https://www.regulations.gov/comment/PHMSA-2021-0092-0017.*
Institute of Hazardous Materials Management (IHMM)	*https://www.regulations.gov/comment/PHMSA-2021-0092-0012.*
Medical Device Transport Council (MDTC)	*https://www.regulations.gov/comment/PHMSA-2021-0092-0016.*
Nordco Inspection Technologies	*https://www.regulations.gov/comment/PHMSA-2021-0092-0022.*
PRBA—The Rechargeable Battery Association	*https://www.regulations.gov/comment/PHMSA-2021-0092-0016.*
Reusable Industrial Packaging Association (RIPA)	*https://www.regulations.gov/comment/PHMSA-2021-0092-0008.*
The Rigid Intermediate Bulk Container Association, Inc. (RIBCA)	*https://www.regulations.gov/comment/PHMSA-2021-0092-0016.*

PHMSA received comments from the A2LA, ALPA, COSTHA, DGAC, HCPA, MDTC, and PRBA, all providing general support for harmonization with international standards with additional support from Entegris, and Hexagon Digital Wave for the incorporation by reference of the ISO standards applicable to cylinders.

Comments concerning the compliance date for the phaseout dates for ISO standards, gas mixtures containing fluorine, IBCs manufactured from recycled plastics, and comments outside the scope of this rulemaking are discussed below. All other comments specific to proposed changes to HMR sections are addressed in the ''V. Section-by-Section Review of Amendments'' of this document.

A. Comments Outside the Scope of This Rulemaking

PHMSA received comments from HCPA and MDTC to reconsider the definition of an aerosol in § 171.8 in order to maintain alignment with international regulations and standards. The commenters note that the United Nations (UN) Model Regulations define an aerosol as an article consisting of a non-refillable receptacle containing a gas, compressed, liquefied or dissolved under pressure, with or without a liquid, paste or powder, and fitted with a release device allowing the contents to be ejected as solid or liquid particles in suspension in a gas, as a foam, paste or powder, or in a liquid or gaseous state. The HMR defines an aerosol in § 171.8 as an article consisting of any non-refillable receptacle containing a gas

[8] 79 FR 66278 (Nov. 7, 2014).

compressed, liquefied, or dissolved under pressure, the sole purpose of which is to expel a nonpoisonous (other than a Division 6.1 Packing Group III material) liquid, paste, or powder, and fitted with a self-closing release device allowing the contents to be ejected by the gas.

PHMSA acknowledges the commenter's concerns over the HMR definition of an aerosol not being harmonized with the UN Model Regulations. However, PHMSA did not propose changes in the NPRM and, therefore, declines to make such revisions in this final rule without further evaluation by PHMSA subject matter experts and an opportunity for stakeholders to comment on the issue. PHMSA will continue to evaluate the potential harmonization of the aerosol definition with the international regulations in conjunction with a petition request from the Consumer Specialty Product Association (CSPA).[9]

PHMSA received comments from Entegris, Hexagon Digital Wave, and Nordco Inspection Technologies suggesting that ISO 18119:2018, ''Gas Cylinders—Seamless Steel And Seamless Aluminum-Alloy Gas Cylinders And Tubes—Periodic Inspection and Testing,'' be incorporated by reference into § 171.7(w), and that § 180.207(d)(1) and (d)(2) be revised to reference ISO 18119:2018. The commenters note that ISO 6406:2005(E), ''Gas cylinders—Seamless steel gas cylinders—Periodic inspection and testing,'' and ISO 10461:2005(E), ''Gas cylinders—Seamless aluminum-alloy gas cylinders—Periodic inspection and testing,'' have now been superseded by ISO 18119:2018 in the ISO catalogue. Further, the commenters note that at the end of 2024, the UN Model Regulations will no longer acknowledge ISO 6406:2005(E) and 10461:2005(E).

PHMSA acknowledges the comments for PHMSA to incorporate by reference ISO 18119:2018 into § 171.7(w), and revise § 180.207 (d)(1) and (d)(2) to reference ISO 18119:2018. However, PHMSA did not propose changes in the NPRM and, therefore, declines to make such revisions in this final rule without further evaluation by PHMSA subject matter experts and an opportunity for stakeholders to comment on the issue. PHMSA has received petitions from both FIBA technologies [10] and Hazmat Safety Consulting [11] proposing to incorporate by reference ISO 18119:2018 into § 171.1, and PHMSA plans to propose this revision in an upcoming rulemaking.

IHMM submitted comments highlighting three accredited professional certifications—the Certified Hazardous Materials Manager (CHMM), the Certified Hazardous Materials Practitioner (CHMP), and the Certified Dangerous Goods Professional (CDGP)—that demonstrate expertise in managing hazardous materials, and recommends that PHMSA require companies transporting hazardous materials to appoint certified professionals responsible for regulatory compliance, similar to the dangerous goods safety advisor required by the Agreement concerning the International Carriage of Dangerous Goods by Road (ADR) within the European Union (EU). IHMM believes that in addition to harmonizing standards, governments should harmonize responsibility for the safe transportation of hazardous materials and dangerous goods. IHMM recommends that PHMSA use its authority to require certified professionals oversee compliance at companies engaged in hazardous materials transportation.

PHMSA acknowledges the IHMM's comment concerning certified professionals. However, PHMSA did not propose such changes in the NPRM and, therefore, declines to make such revisions in this final rule without further evaluation by PHMSA subject matter experts and an opportunity for stakeholders to comment on the issue. If the commenter has a specific proposal, PHMSA encourages the commenter to submit a petition for rulemaking in accordance with § 106.100 of the HMR.

A2LA supports the proposed amendments and actions that are being considered in this rulemaking to be consistent with international standards to harmonize activities and promote greater safety and efficiencies. A2LA also encourages PHMSA to take this a step further by recommending that when testing is required, that laboratories approved under ISO/IEC 17025, ''Testing and calibration laboratories,'' be relied upon for testing activities. A2LA asserts that this will help ensure data generated for HMR compliance is developed by accredited bodies. A2LA adds that this revision would provide and establish a framework for the harmonization of accreditation activities globally.

PHMSA acknowledges A2LA's comment concerning laboratories approved under ISO/IEC 17025. However, PHMSA did not propose such changes in the NPRM and, therefore, declines to make such revisions in this final rule without further evaluation by PHMSA subject matter experts and an opportunity for stakeholders to comment on the issue. If the commenter has a specific proposal, PHMSA encourages the commenter to submit a petition for rulemaking in accordance with § 106.100 of the HMR.

B. Phaseout Dates for ISO Standards

CGA and Entegris submitted comments regarding the proposed incorporation of ISO 11117:2019, ''Gas cylinders—Valve protection caps and guards—Design, construction and tests,'' into § 173.301b(c)(2)(ii). CGA and Entegris note that the language proposed in § 173.301b(c)(2)(ii) of the NPRM removes ISO 11117:2008 and creates a phaseout date of December 31, 2026, for its use. To ensure the continued use of existing caps made to previous editions of ISO 11117, CGA and Entegris suggest a revision to § 173.301b(c)(2)(ii) that more closely aligns with sub-paragraph 4.1.6.1.8 of the 22nd edition of the UN Model Regulations. The revision proposed by CGA and Entegris would make it clear that valve caps manufactured up until December 31, 2026, under ISO 11117:2008 could continue to be used under the HMR. CGA and Entegris add that the proposed text in the NPRM would result in an unnecessary economic burden by mandating the replacement of valve protection caps under the HMR that would remain authorized by the UN Model Regulations. Entegris adds that consideration should be given to permit the use of these older valve caps that adhere to ISO 11117:2008.

PHMSA concurs with CGA and Entegris that the intent of the language in the UN Model Regulations was to allow the continued use of the valve protection caps under ISO 11117:2008 provided they are manufactured prior to December 31, 2026. As such, PHMSA is revising the text in § 173.301b(c)(2)(ii) to more closely align with the intent of the UN Model Regulations and allow for the continued use of valve caps manufactured prior to December 31, 2026, under ISO 11117:2008.

CGA also provided comments suggesting that PHMSA modify the regulatory text for all the IBR ISO standards in §§ 178.71 and 178.75 to permit the manufacturing of UN cylinders conforming to the ISO standards being replaced until December 31, 2026, to better align the HMR with the intent of the 22nd edition of the UN Model Regulations. PHMSA concurs with CGA's comment that the intent of this proposal was to closely align with the phaseout language in the

[9] *https://www.regulations.gov/docket/PHMSA-2017-0131/document.*

[10] *https://www.regulations.gov/docket/PHMSA-2020-0168/document.*

[11] *https://www.regulations.gov/document/PHMSA-2023-0088-0001.*

UN Model Regulations. As such, PHMSA has revised the text for the ISO publications in §§ 178.71 and 178.75 to better reflect the phaseout dates as intended and represented in the UN Model Regulations.

C. Gas Mixtures Containing Fluorine

In the NPRM, PHMSA proposed a new special provision for UN pressure receptacles containing fluorine mixed with inert gases. This proposal was intended to provide flexibility for the maximum allowable working pressure for cylinders containing fluorine gas when fluorine is part of a less reactive gas mixture. This revision was supported due to pure fluorine gas being highly reactive and restrictive, while gas mixtures with small amounts of fluorine are less hazardous. The 22nd edition of the UN Model Regulations allows for higher working pressures for cylinders containing gas mixtures of fluorine with inert gases based on the application of partial pressure calculations.

In the NPRM, PHMSA proposed to add special provision 441 to § 172.102 to align with revisions made to the UN Model Regulations for gas mixtures containing fluorine. The NPRM assigned special provision 441 to the proper shipping name ''UN1045, Fluorine, compressed'' in the HMT. CGA and Entegris provided comments stating that the proposed special provision 441 in the NPRM should not be applied to ''UN1045, Fluorine, compressed,'' as mixtures of fluorine with inert gases and a fluorine concentration <35% are no longer Hazard Zone A gases. The commenters add that there is no scenario where a gas classified as ''UN1045, Fluorine compressed'' would be able to qualify for the exception as proposed in special provision 441 of the NPRM. The commenters add that special provision 441 should have been applied to the n.o.s. entries: ''UN3306, Compressed gas, poisonous, oxidizing, corrosive, n.o.s.;'' ''UN3156, Compressed gas, oxidizing, n.o.s.;'' and ''UN1956, Compressed gas, n.o.s.,'' as was done in the 22nd edition of the UN Model Regulations. Entegris and CGA also note that the equations in the NPRM for new special provision 441 have several editorial errors. The amendments made to the UN Model Regulations provide two calculations to calculate the MAWP for mixtures of fluorine and inert gases with a fluorine concentration <35%, both of which contain editorial errors.

PHMSA agrees with the commenters, and in this final rule PHMSA has determined that special provision 441 as proposed in the NPRM would not be appropriate to apply to ''UN1045, Fluorine, compressed.'' Additionally, PHMSA asserts that instead of applying a special provision to all of the applicable UN numbers, it is more appropriate to revise § 173.302b by adding a paragraph (g) for gas mixtures containing fluorine gases as was generally suggested by CGA.[12] This new paragraph in § 173.302b(g)(5) that appears in this final rule has the same wording as was proposed in special provision 441 of the NPRM, with the additional editorial corrections for the partial pressure calculations as suggested by Entegris. PHMSA asserts that by placing these flexibilities in § 173.302b(g), gas mixtures containing fluorine gas will be permitted to take the flexibilities as allowed under the UN Model Regulations.

D. IBCs Manufactured From Recycled Plastics

In the NPRM, PHMSA proposed to revise §§ 178.706(c)(3) and 178.707(c)(3) to allow for the manufacturing of rigid and composite IBCs manufactured from recycled plastics. The NPRM proposed to allow the construction of IBCs from recycled plastics with the approval of the Associate Administrator, consistent with a change adopted in the 22nd revised edition of the UN Model Regulations. In the NPRM, PHMSA proposed including a slight variation from the international provision by requiring prior approval by the Associate Administrator for use of recycled plastics in the construction of IBCs manufactured from recycled plastics.

RIBCA submitted comments expressing disagreement with the proposed requirement for manufacturers to obtain case-by-case approval from PHMSA's Associate Administrator prior to using recycled plastic in the manufacturing of rigid and composite IBCs. RIBCA argued the PHMSA proposal is inconsistent with the UN Model Regulations, which allow the use of recycled plastics meeting a specified definition without any competent authority approval. RIBCA also questioned PHMSA's rationale that approvals are needed due to lack of HMR requirements for manufacturer quality assurance programs, noting these are already integral to ensuring IBC integrity. Further, RIBCA stated that the performance-oriented packaging requirements in the HMR should sufficiently address any safety issues with recycled plastics, as demonstrated by the millions of UN plastic drums and jerricans successfully produced with recycled plastics. RIBCA mentioned that due to constraints under the Administrative Procedure Act, the changes they recommend may fall outside the scope of revisions PHMSA could make in a final rule. Overall, RIBCA recommended that PHMSA align the HMR with the UN Model Regulations and authorize recycled plastic in the manufacturing of IBCs without additional competent authority approvals.

PHMSA acknowledges RIBCAs comments and notes that, in the NPRM, PHMSA stated that the UN Model Regulations incorporate quality assurance program requirements that require recognition by a governing body. By requiring approval of the Associate Administrator, PHMSA is able to maintain oversight of procedures, such as batch testing, that manufacturers will use to ensure the quality of recycled plastics used in the construction of recycled plastic IBCs. PHMSA asserts that the proposals in the NPRM are consistent with the intent of the UN Model Regulations.

Additionally, PHMSA is currently conducting research to develop an Agency-wide policy on packages manufactured from recycled plastics. On April 14, 2023,[13] PHMSA published a request for information (RFI) pertaining to how the potential use of recycled plastic resins in the manufacturing of specification packagings may affect hazardous materials transportation safety. In response to the RFI, PHMSA received nine comments and is currently evaluating those comments in order to determine an Agency-wide policy on recycled plastics in packagings. Until this analysis is complete and PHMSA is ready to deploy an Agency-wide policy, PHMSA asserts it is prudent for now to leave in the requirement to obtain a competent authority approval prior to the manufacturing of IBCs made from recycled plastics. PHMSA also notes that RIPA, DGAC, and Dow Chemical provided comments to the NPRM in support of these revisions as written.

V. Section-by-Section Review of Amendments

The following is a section-by-section review of amendments to harmonize the HMR with international regulations and standards.

[12] PHMSA notes that in a separate rulemaking (HM–219D, ''Adoption of Miscellaneous Petitions and Updating Regulatory Requirements'') that will be published and codified before this final rule, it is adopting a new paragraph (f) within § 173.302b.

[13] *https://www.federalregister.gov/documents/2023/04/14/2023-07869/hazardous-materials-request-for-feedback-on-recycled-plastics-policy.*

A. Part 171

Section 171.7

Section 171.7 provides a listing of all voluntary consensus standards incorporated by reference into the HMR, as directed by the NTTAA. PHMSA evaluated updated international consensus standards pertaining to PSNs, hazard classes, PGs, special provisions, packaging authorizations, air transport quantity limitations, and vessel stowage requirements. PHMSA contributed to the development of those standards—each of which build on the well-established and documented safety histories of earlier editions—as it participated in the discussions and working group activities associated with their proposal, revision, and approval. Those activities, in turn, have informed PHMSA's evaluation of the effect the updated consensus standards will have on safety, when incorporated by reference and with provisions adopted into the HMR. Further, PHMSA notes that some of the consensus standards incorporated by reference within the HMR in this final rule have already been adopted into the regulatory schemes of other countries. Additionally, as noted above, PHMSA has issued past enforcement discretions authorizing the use of the consensus standards as an interim strategy for complying with current HMR requirements. PHMSA is not aware of adverse safety impacts from that operational experience. For these reasons, PHMSA expects their incorporation by reference will maintain the high safety standard currently achieved under the HMR. PHMSA received comments from ALPA, CGA, COSTHA, DGAC, Entegris, and Hexagon Digital Wave that were generally supportive of the proposals to incorporate by reference the latest versions of the international standards. Therefore, PHMSA is adding or revising the following incorporation by reference materials.[14]

• In paragraph (t)(1), incorporate by reference the 2023–2024 edition of the ICAO Technical Instructions, to replace the 2021–2022 edition, which is currently referenced in §§ 171.8; 171.22 through 171.24; 172.101; 172.202; 172.401; 172.407; 172.512; 172.519; 172.602; 173.56; 173.320; 175.10, 175.33; and 178.3. The ICAO Technical Instructions specify detailed instructions for the international safe transport of dangerous goods by air. The requirements in the 2023–2024 edition have been amended to align better with the 22nd revised edition of the UN Model Regulations and the International Atomic Energy Agency (IAEA) Regulations for the Safe Transport of Radioactive Material. Notable changes in the 2023–2024 edition of the ICAO Technical Instructions include new packing and stowage provisions, new and revised entries on its Dangerous Goods List, and editorial corrections. The 2023–2024 edition of the ICAO Technical Instructions is available for purchase on the ICAO website at *https://store.icao.int/en/shop-by-areas/safety/dangerous-goods.*

• In paragraph (v)(2), incorporate by reference the 2022 edition of the IMDG Code, Incorporating Amendment 41–22 (English Edition), to replace Incorporating Amendment 40–20, 2020 Edition, which is currently referenced in §§ 171.22; 171.23; 171.25; 172.101; 172.202; 172.203; 172.401; 172.407; 172.502; 172.519; 172.602; 173.21; 173.56; 176.2; 176.5; 176.11; 176.27; 176.30; 176.83; 176.84; 176.140; 176.720; 176.906; 178.3; and 178.274. The IMDG Code is a unified international code that outlines standards and requirements for the transport of dangerous goods by sea (*i.e.,* by vessel). Notable changes in Amendment 41–22 of the IMDG Code include new packing and stowage provisions, new and revised entries on its Dangerous Goods List, and editorial corrections. Distributors of the IMDG Code can be found on the International Maritime Organization (IMO) website at: *https://www.imo.org/en/publications/Pages/Distributors-default.aspx.*

• In paragraph (w), incorporate by reference or remove the following ISO documents to include new and updated standards for the specification, design, construction, testing, and use of gas cylinders:

• ISO 9809, Parts 1 through 3. ISO 9809 is comprised of four parts (ISO 9809–1 through 9809–4) and specifies minimum requirements for the material, design, construction, and workmanship; manufacturing processes; and examination and testing at time of manufacture for various types of refillable seamless steel gas cylinders and tubes. PHMSA is incorporating by reference the most recent versions of Parts 1 through 3.

• Incorporate by reference the third edition of ISO 9809–1:2019(E), ''*Gas cylinders—Design, construction and testing of refillable seamless steel gas cylinders and tubes—Part 1: Quenched and tempered steel cylinders and tubes with tensile strength less than 1100 Mpa,*'' in paragraph (w)(32). Additionally, PHMSA is allowing a sunset date of December 31, 2026, for continued use and phase out of the second edition of ISO 9809–1:2010, which is currently referenced in § 178.37, § 178.71, and § 178.75. PHMSA clarified in the ''IV: Comment Discussion'' section of this final rule that the phaseout date of December 31, 2026, applies to the manufacturing of cylinders and tubes with tensile strength below 1100 Mpa under ISO 9809–1:2010. Cylinders manufactured before December 31, 2026, under ISO 9809–1:2010 are authorized under the HMR. Part 1 of ISO 9809 is applicable to cylinders and tubes for compressed, liquefied, and dissolved gases, and for quenched and tempered steel cylinders and tubes with a maximum actual tensile strength of less than 1100 MPa, which is equivalent to U.S. customary unit of about 160,000 psi. As part of its periodic review of all standards, ISO reviewed ISO 9809–1:2010(E) and published an updated version, ISO 9809–1:2019(E), which was published in 2019 and adopted in the 22nd revised edition of the UN Model Regulations. The updated standard has technical revisions including limiting the bend test only for prototype tests. Updating references to this document aligns the HMR with changes adopted in the 22nd revised edition of the UN Model Regulations pertaining to the design and construction of UN cylinders. PHMSA has reviewed this edition as part of its regular participation in the review of amendments for the UN Model Regulations and concludes incorporation of the revised third edition will maintain or improve the safety standards associated with its use.

• Incorporate by reference the third edition of ISO 9809–2:2019(E), ''*Gas cylinders—Design, construction and testing of refillable seamless steel gas cylinders and tubes—Part 2: Quenched and tempered steel cylinders and tubes with tensile strength greater than or equal to 1100 MPa,*'' in paragraph (w)(35). ISO 9809–2:2019 is the third edition of ISO 9809–2. Additionally, PHMSA is adding a sunset date of December 31, 2026, for continued use and phaseout of the second edition of ISO 9809–2:2010, which is currently referenced in § 178.71 and § 178.75. PHMSA clarified in the ''Section IV: Comment Discussion'' section of this final rule that the phaseout date of December 31, 2026, applies to the manufacturing of cylinder under ISO 9809–2:2010. Cylinders manufactured before December 31, 2026, under ISO 9809–2:2010 are authorized under the HMR. ISO 9809–2:2019 specifies minimum requirements for the material, design, construction and workmanship;

[14] All other standards that are set out as part of the regulatory text of § 171.7(w) were previously approved for incorporation by reference.

manufacturing processes; and examination and testing at time of manufacture for refillable seamless steel gas cylinders and tubes with water capacities up to and including 450 L. Part 2 of ISO 9809 is applicable to cylinders and tubes for compressed, liquefied, and dissolved gases, and for quenched and tempered steel cylinders and tubes with an actual tensile strength greater than or equal to 1100 MPa. As part of its periodic review of all standards, ISO reviewed ISO 9809–2:2010 and published an updated version, ISO 9809–2:2019, in 2019; this updated version was adopted in the 22nd revised edition of the UN Model Regulations. The updated standard has technical revisions including expanded cylinder size (*i.e.,* allowed water capacity is extended from below 0.5 L up to and including 450 L); the introduction of specific batch sizes for tubes; limiting the bend test only for prototype tests; the addition of test requirements for check analysis (tolerances modified); and the addition of new test requirements for threads. Updating references to this document aligns the HMR with changes adopted in the 22nd revised edition of the UN Model Regulations pertaining to the design and construction of UN cylinders. PHMSA has reviewed this edition as part of its regular participation in the review of amendments for the UN Model Regulations and concludes incorporation of the revised third edition will maintain or improve the safety standards associated with its use.

• Incorporate by reference the third edition of ISO 9809–3:2019(E), ''*Gas cylinders—Design, construction and testing of refillable seamless steel gas cylinders and tubes—Part 3: Normalized steel cylinders and tubes*'' in paragraph (w)(38). Additionally, PHMSA is allowing a sunset date of December 31, 2026, for continued use phaseout of the second edition of ISO 9809–3:2010, which is currently referenced in § 178.71 and § 178.75. PHMSA clarified in the ''Section IV: Comment Discussion'' section of this final rule that the phaseout date of December 31, 2026, applies to the manufacturing of cylinders under ISO 9809–3:2010. Cylinders manufactured before December 31, 2026, under ISO 9808–3:2010 would still be authorized under the HMR. ISO 9809–3 is applicable to cylinders and tubes for compressed, liquefied, and dissolved gases, and for normalized, or normalized and tempered, steel cylinders and tubes. As part of its periodic review of all standards, ISO reviewed ISO 9809–3:2010 and published an updated version, ISO 9809–3:2019. The updated standard has technical revisions including: a wider scope of cylinders (*i.e.,* allowed water capacity is extended from below 0.5 L up to and including 450 L); the introduction of specific batch sizes for tubes; limiting the bend test only for prototype tests; the addition of test requirements for check analysis (tolerances modified); and the addition of new test requirements for threads. Updating references to the 2019 edition aligns the HMR with changes adopted in the 22nd revised edition of the UN Model Regulations, which added this version pertaining to the design and construction of UN cylinders. PHMSA has reviewed this edition as part of its regular participation in the review of amendments for the UN Model Regulations and concludes incorporation of the revised third edition will maintain or improve the safety standards associated with its use.

• Incorporate by reference supplemental amendment ISO 10462:2013/Amd 1:2019(E), ''*Gas cylinders—Acetylene cylinders—Periodic inspection and maintenance—Amendment 1,*'' in paragraph (w)(48). This amendment adds a reference to ISO 10462:2013/Amd 1:2019(E) in § 180.207(d)(3), where ISO 10462:2013 is currently required, and adds a sunset date of December 31, 2024, for continued use and phaseout of ISO 10462:2013 without the supplemental amendment. ISO 10462:2013 specifies requirements for the periodic inspection of acetylene cylinders as required for the transport of dangerous goods and for maintenance in connection with periodic inspection. It applies to acetylene cylinders with and without solvent, and with a maximum nominal water capacity of 150 L. As part of a periodic review of its standards, ISO reviewed ISO 10462:2013, and in June 2019 published a short supplemental amendment, ISO 10462:2013/Amd 1:2019. The supplemental document includes updates such as simplified marking requirements for rejected cylinders. Updating references to this document aligns the HMR with documents referenced in the 22nd revised edition of the UN Model Regulations pertaining to the requalification procedures for acetylene UN cylinders. PHMSA has reviewed this edition as part of its regular participation in the review of amendments for the UN Model Regulations and concludes the incorporation of the supplemental document maintains the HMR safety standards for use of acetylene cylinders.

• Incorporate by reference the third edition of ISO 11117:2019(E), ''*Gas cylinders—Valve protection caps and guards—Design, construction and tests,*'' in paragraph (w)(56). This amendment authorizes the use of the third edition until further notice, and adds an end date of December 31st, 2026, to the authorization for use of the second edition—ISO 11117:2008—and the associated corrigendum, which are currently referenced in § 173.301b. ISO 11117 specifies the requirements for valve protection caps and valve guards used on cylinders for liquefied, dissolved, or compressed gases. The changes in this revised standard pertain to the improvement of the interoperability of both the valve protection caps and the valve guards, with the cylinders and the cylinder valves. To that end, the drop test, the marking, and test report requirements have been revised and clarified. Updating references to this document aligns the HMR with changes adopted in the 22nd revised edition of the UN Model Regulations pertaining to valve protection on UN pressure receptacles. PHMSA has reviewed this edition as part of its regular participation in the review of amendments for the UN Model Regulations and does not expect any degradation of safety standards in association with its use.

• Incorporate by reference ISO 11118:2015/Amd 1:2019(E), ''*Gas cylinders—Non-refillable metallic gas cylinders—Specification and test methods—Amendment 1,*'' in paragraph (w)(59). ISO 11118:2015/Amd 1:2019(E) is a short supplemental amendment that is intended to be used in conjunction with ISO 11118:2015, which is currently referenced in § 178.71. This amendment authorizes the use of this supplemental amendment in conjunction with ISO 11118:2015 until further notice, and adds an end date of December 31, 2026, until which ISO 11118:2015 may continue to be used without this supplemental amendment. ISO 11118:2015, which specifies minimum requirements for the material, design, inspections, construction and workmanship; manufacturing processes; and tests at manufacture of non-refillable metallic gas cylinders of welded, brazed, or seamless construction for compressed and liquefied gases, including the requirements for their non-refillable sealing devices and their methods of testing. ISO 11118:2015/Amd 1:2019 corrects the identity of referenced clauses and corrects numerous typographical errors. The amendment

also includes updates to the marking requirements in the normative Annex A, which includes clarifications, corrections, and new testing requirements. Updating references to this document aligns the HMR with documents referenced in the 22nd revised edition of the UN Model Regulations pertaining to non-refillable UN cylinders. PHMSA has reviewed this amended document as part of its regular participation in the review of amendments for the UN Model Regulations and determined the added corrections and clarifications provide important additional utility for users of ISO 11118:2015(E). PHMSA does not expect any degradation of safety standards in association with its use and expects updates to these safety standards may provide an additional level of safety.

• Incorporate by reference ISO 11513:2019, ''*Gas cylinders—Refillable welded steel cylinders containing materials for sub-atmospheric gas packaging (excluding acetylene)—Design, construction, testing, use and periodic inspection,*'' in paragraph (w)(71). ISO 11513:2019 is the second edition of ISO 11513. This amendment authorizes the use of the second edition and adds an end date to the authorization for use of the first edition, ISO 11513:2011 (including Annex A), which is currently referenced in § 173.302c, § 178.71, and § 180.207. ISO 11513 specifies minimum requirements for the material, design, construction, workmanship, examination, and testing at manufacture of refillable welded steel cylinders for the sub-atmospheric pressure storage of liquefied and compressed gases. The second edition has been updated to amend packing instructions and remove a prohibition on the use of ultrasonic testing during periodic inspection. Updating references to this document aligns the HMR with documents referenced in the 22nd revised edition of the UN Model Regulations pertaining to the shipment of adsorbed gases in UN pressure receptacles. PHMSA has reviewed this edition as part of its regular participation in the review of amendments for the UN Model Regulations and does not expect any degradation of safety standards in association with its use and expects updates to these safety standards may provide an additional level of safety.

• Incorporate by reference ISO 16111:2018, ''*Transportable gas storage devices—Hydrogen absorbed in reversible metal hydride,*'' in paragraph (w)(80). ISO 16111:2018 is the second edition of ISO 16111. This amendment authorizes the use of the second edition until further notice, and adds an end date of December 31, 2026, on the authorization to use the first edition, ISO 16111:2008, which is referenced in §§ 173.301b, 173.311, and 178.71. PHMSA clarified in the ''Section IV: Comment Discussion'' section of this final rule that the phaseout date of December 31, 2026, applies to the manufacturing of metal hydride storage devices under ISO 16111:2008. Metal hydride storage systems manufactured before December 31, 2016, under ISO 16111:2009 are still authorized under the HMR. ISO 16111 defines the requirements applicable to the material, design, construction, and testing of transportable hydrogen gas storage systems, which utilize shells not exceeding 150 L internal volume and having a maximum developed pressure not exceeding 25 MPa. This updated standard includes additional information pertaining to service temperature conditions that have been described in detail; new references related to shell design; modified drop test conditions; modified acceptance criteria for leak testing; modified hydrogen cycling conditions; new warning labelling; and updated information on safety data sheets. Updating references to this document aligns the HMR with documents referenced in the 22nd revised edition of the UN Model Regulations pertaining to metal hydride storage systems. PHMSA has reviewed this edition as part of its regular participation in the review of amendments for the UN Model Regulations and expects updates to these safety standards may provide an additional level of safety.

• Incorporate by reference ISO 17871:2020(E), ''*Gas cylinders—Quick-release cylinder valves—Specification and type testing,*'' in paragraph (w)(83). ISO 17871:2020 is the second edition of ISO 17871. This amendment authorizes the use of the second edition and adds an end date of December 31, 2026, to the authorization for use of the first edition, ISO 17871:2015(E), which is currently referenced in 173.301b. This document, in conjunction with ISO 10297 and ISO 14246, specifies design, type testing, marking, manufacturing tests, and examination requirements for quick-release cylinder valves intended to be fitted to refillable transportable gas cylinders, pressure drums, and tubes that convey certain gases, such as compressed or liquefied gases, or extinguishing agents charged with compressed gases to be used for fire-extinguishing, explosion protection, and rescue applications. As part of its regular review of its standards, ISO updated and published the second edition of ISO 17871 as ISO 17871:2020. The 2020 edition of this standard broadens the scope to include quick release valves for pressure drums and tubes, and specifically excludes the use of quick release valves with flammable gases. Other notable changes include the addition of the valve burst test pressure; the deletion of the flame impingement test; and the deletion of internal leak tightness test at −40 °C for quick release cylinder valves used only for fixed fire-fighting systems installed in buildings. Updating references to this document aligns the HMR with changes adopted in the 22nd revised edition of the UN Model Regulations pertaining to the shipment of gases in UN pressure receptacles. PHMSA has reviewed this edition as part of its regular participation in the review of amendments for the UN Model Regulations and does not expect any degradation of safety standards in association with its use.

• Incorporate by reference ISO 21172–1:2015/Amd 1:2018, ''*Gas cylinders—Welded steel pressure drums up to 3000 litres capacity for the transport of gases—Design and construction—Part 1: Capacities up to 1000 litres—Amendment 1,*'' in paragraph (w)(89). ISO 21172–1:2015/Amd1:2018 is a short supplemental amendment intended to be used in conjunction with ISO 21172–1:2015, which is currently referenced in § 178.71. This amendment authorizes the use of this supplemental document in conjunction with the first edition, ISO 21172–1:2015. It also adds an end date of December 31, 2026, until which ISO 21172–1:2015 may continue to be used without this supplemental amendment. ISO 21172–1:2015 specifies the minimum requirements for the material, design, fabrication, construction, workmanship, inspection, and testing at manufacture of refillable welded steel gas pressure drums of volumes 150 L to 1,000 L, and up to 300 bar (30 MPa) test pressure for compressed and liquefied gases. This supplemental amendment includes updated references and removes the restriction on corrosive substances. Updating references to this document aligns the HMR with documents referenced in the 22nd revised edition of the UN Model Regulations pertaining to the design and construction of UN pressure drums. PHMSA has reviewed this edition as part of its regular participation in the review of amendments for the UN Model Regulations and does not expect any

degradation of safety standards in association with its use.

• Incorporate by reference ISO 23088:2020, ''*Gas cylinders—Periodic inspection and testing of welded steel pressure drums—Capacities up to 1000 l,*'' in paragraph (w)(91). This amendment incorporates by reference the first edition of ISO 23088, which specifies the requirements for periodic inspection and testing of welded steel transportable pressure drums of water capacity from 150 L up to 1,000 L, and up to 300 bar (30 MPa) test pressure intended for compressed and liquefied gases in § 180.207. This new standard was adopted in the 22nd revised edition of the UN Model Regulations because it fulfills the need for specific periodic inspection instructions for pressure drums constructed in accordance with ISO 21172–1. Incorporating by reference this document aligns the HMR with standards adopted in the 22nd revised edition of the UN Model Regulations pertaining to the design, construction, and inspection of UN pressure drums. PHMSA has reviewed this document as part of its regular participation in the review of amendments for the UN Model Regulations and expects that its addition will facilitate the continued use of UN pressure drums with no degradation of safety.

• In paragraph (aa)(3), incorporate by reference the OECD Guidelines for the Testing of Chemicals, ''Test No. 439: *In Vitro* Skin Irritation: Reconstructed Human Epidermis Test Method'' (2015). This Test Guideline (TG) provides an *in vitro* procedure that may be used for the hazard identification of irritant chemicals. PHMSA is amending the HMR to reference this test in § 173.137, and to authorize the use of this test method in addition to those already referenced in that section. This test method is used to specifically exclude a material from classification as corrosive, and to maintain alignment with the 22nd revised edition of the UN Model Regulations. This test method provides an *in vitro* procedure that may be used for the hazard identification of irritant chemicals (substances and mixtures). OECD test methods can be found in the OECD iLibrary available at *https://www.oecd-ilibrary.org.*

• In paragraph (dd), incorporate by reference United Nations standards including:

→ ''The Recommendations on the Transport of Dangerous Goods—Model Regulations,'' 22nd revised edition (2021), Volumes I and II, in paragraph (dd)(1), which are referenced in §§ 171.8; 171.12; 172.202; 172.401; 172.407; 172.502; 172.519; 173.22; 173.24; 173.24b; 173.40; 173.56; 173.192; 173.302b; 173.304b; 178.75; and 178.274. The Model Regulations provide framework provisions promoting uniform development of national and international regulations governing the transportation of hazardous materials by various modes of transport. At its tenth session on December 11, 2020, the UNSCOE on the Transport of Dangerous Goods adopted amendments to the UN Model Regulations on the Transport of Dangerous Goods concerning, inter alia, electric storage systems (including modification of the lithium battery mark and provisions for transport of assembled batteries not equipped with overcharge protection); requirements for the design, construction, inspection, and testing of portable tanks with shells made of fiber reinforced plastics (FRP) materials; modified listings of dangerous goods; and additional harmonization with the IAEA Regulations for the Safe Transport of Radioactive Material. PHMSA participates in the development of the UN Model Regulations and has determined that the amendments adopted in the 22nd revised edition support the safe transport of hazardous materials and as such are appropriate for incorporation in the HMR. The 22nd revised edition of the UN Model Regulations is available online at *https://unece.org/transport/dangerous-goods/un-model-regulations-rev-22.*

→ ''The Manual of Tests and Criteria, Amendment 1 to the Seventh revised edition'' (Rev.7/Amend.1) (2021), in paragraph (dd)(2)(ii), which is referenced in §§ 171.24, 172.102; 173.21; 173.56; 173.57; 173.58; 173.60; 173.115; 173.124; 173.125; 173.127; 173.128; 173.137; 173.185; 173.220; 173.221; 173.224; 173.225; 173.232; part 173, appendix H; 175.10; 176.905; and 178.274. The Manual of Tests and Criteria contains instruction for the classification of hazardous materials for purposes of transportation according to the UN Model Regulations. At its tenth session, the Committee of Experts on the Transport of Dangerous Goods and on the Globally Harmonized System of Classification and Labelling of Chemicals adopted a set of amendments to the seventh revised edition of the Manual, which were circulated and collected in amendment 1 to the seventh revised edition. The new amendments adopted in December 2020 pertain to the transport of explosives, including alignment with revised Chapter 2.1 of the GHS, classification of self-reactive substances and polymerizing substances, and the assessment of the thermal stability of samples and temperature control assessment for transport of self-reactive substances and organic peroxides. PHMSA has reviewed and approved the amendments adopted in this document and further expects that their incorporation in the HMR will provide an additional level of safety. PHMSA is incorporating by reference this document as a supplement, to be used in conjunction with the seventh revised edition (2019). The amendments to the manual can be accessed at *https://unece.org/transport/dangerous-goods/rev7-files.*

→ ''Globally Harmonized System of Classification and Labelling of Chemicals (GHS),'' ninth revised edition (2021) in paragraph (dd)(3), which is referenced in § 172.401. The GHS standard provides a basic scheme to identify and communicate the hazards of substances and mixtures. At its tenth session on December 11, 2020, the Committee of Experts on the Transport of Dangerous Goods and on the Globally Harmonized System of Classification and Labelling of Chemicals adopted a set of amendments to the eighth revised edition of the GHS which include, inter alia: revisions to Chapter 2.1 (explosives) to better address their explosion hazard when they are not in their transport configuration; revisions to decision logics; revisions to classification and labelling summary tables in Annex 1; revisions and additional rationalization of precautionary statements; and updates of references to OECD test guidelines for the testing of chemicals in Annexes 9 and 10. PHMSA has reviewed and approved the amendments incorporated in this document and further expects that its incorporation in the HMR will provide an additional level of safety. The ninth revised edition of the GHS can be accessed at *https://unece.org/transport/standards/transport/dangerous-goods/ghs-rev9-2021.*

Section 171.12

Section 171.12 prescribes requirements for shipments of hazardous materials in North America, including use of the Transport Canada (TC) Transportation of Dangerous Goods (TDG) Regulations. In rule HM–215N,[15] PHMSA amended the HMR to expand recognition of cylinders and pressure receptacles, and certificates of equivalency—Transport Canada's equivalent of a special permit—approved in accordance with the TDG Regulations. The goal of these amendments was to promote flexibility; permit the use of modern technology for

[15] 82 FR 15796 (Mar. 30, 2017).

the requalification and use of pressure receptacles; expand the universe of pressure receptacles authorized for use in hazardous material transport; reduce the need for special permits; and facilitate cross-border transportation of these pressure receptacles. In accordance with § 171.12(a)(4), when the provisions of the HMR require the use of either a DOT specification or a UN pressure receptacle for transport of a hazardous material, a packaging authorized by Transport Canada's TDG Regulations may be used only if it corresponds to the DOT specification or UN standard. HM–215N revised paragraph (a)(4)(iii) to include a table listing Canadian Railway Commission (CRC), Board of Transport Commissioners for Canada (BTC), Canadian Transport Commission (CTC), or Transport Canada (TC) specification cylinders, in accordance and full conformance with the TDG Regulations, that correspond with a DOT specification cylinder.

However, currently there are no TC specification cylinders corresponding to DOT specification cylinders listed in the table for DOT–8 and DOT–8AL cylinders used to transport acetylene. During the development of HM–215N, PHMSA conducted a comparative analysis of DOT and TC cylinder specifications, and only those TC cylinder specifications that corresponded directly to DOT cylinder specifications were included. As a result, PHMSA did not include TC–8WM and TC–8WAM specifications for the transport of acetylene in the table of corresponding cylinders at § 171.12(a)(4)(iii). This omission was primarily due to concerns over differing solvent authorizations, calculations, and methods of construction for the design associated with the TC–8WM and TC–8WAM specifications. PHMSA conducted a second comparative analysis of DOT and TC cylinder specifications for transport of acetylene and concluded that the initial concerns were unwarranted. Therefore, PHMSA is adding TC–8WM and TC–8WAM specifications to the table of corresponding DOT specifications in § 171.12(a)(4)(iii) as comparable cylinders to DOT–8 and DOT–8AL, respectively. PHMSA's supplemental review indicates the differences between the TC and DOT specifications for transport of acetylene are minor, and the standard for safety of transportation of acetylene in cylinders under the HMR is maintained. This amendment allows for TC acetylene cylinders manufactured in Canada to be filled, used, and requalified (including rebuild, repair, and reheat-treatment) in the United States, facilitating cross border movement of acetylene and eliminating the need for a special permit to allow transport of acetylene in these TC–8WM and TC–8AWM cylinders while maintaining an equivalent level of safety. Additionally, this amendment provides reciprocity to TC's authorized use of DOT–8 and DOT–8AL cylinders for acetylene transport. DGAC and CGA provided comments in support of this revision. Additionally, DGAC urges TC and PHMSA to work to mutually recognize competent authority approvals and special permits. DGAC adds that mutual recognition of these authorities will further enable companies to move hazardous material in a safe and expeditious manner, eliminating unnecessary applications to both regulatory authorities, while maintaining safe transportation for hazardous materials. PHMSA acknowledges DGAC's comment and will continue to work with TC on efforts to harmonize the TDG with the HMR in the future.

Section 171.23

Section 171.23 outlines the requirements for specific materials and packagings transported under the ICAO Technical Instructions, IMDG Code, TC TDG Regulations, or the IAEA Regulations. It also includes authorized use, under specific conditions, of pi-marked pressure receptacles that comply with the Agreement Concerning the International Carriage of Dangerous Goods by Road (ADR), and the EU Directive 2010/35/EU,[16] and marked with a pi (π) symbol to denote such compliance for transport of hazardous materials. PHMSA is amending the language in the provisions for pi-marked pressure receptacles in paragraph (a)(3) to clarify the scope of pressure receptacles authorized by this section. ''Pressure receptacles'' is a collective term that may be used to refer to many types of pressurized containers of various sizes, such as cylinders, tubes, pressure drums, closed cryogenic receptacles, metal hydride storage systems, bundles of cylinders, or salvage pressure receptacles. When PHMSA adopted the provisions for pi-marked pressure receptacles,[17] it did not intend to broadly apply the scope to all pressure receptacle types. Instead, PHMSA's intent was to apply the authorized use of pi-marked pressure receptacles domestically only to cylinders, as indicated in current paragraph (a)(3)(iii), which specifically references cylinders. Some of the pressure receptacles authorized in accordance with the ADR standard do not have an equivalent packaging authorized in the HMR, and some have large capacities, both of which give pause to PHMSA with respect to the hazardous materials authorized in these packagings. Therefore, PHMSA is replacing the words ''pressure receptacles'' in paragraph (a)(3) with ''cylinders with a water capacity not exceeding 150 L,'' as defined in § 171.8, to specify the scope of pi-marked pressure receptacles authorized under § 171.23. PHMSA expects that this amendment will improve safety by providing additional clarity with regard to the scope of authorized use of pi-marked pressure receptacles for transport of hazardous material in the United States. PHMSA is aware of growing interest in the authorization for use of other pi-marked pressure receptacles and PHMSA plans to address that issue in a future rulemaking. CGA and DGAC provided a comment in support of this revision.

Section 171.25

Section 171.25 outlines additional requirements for the use of the IMDG Code in addition to those found in § 171.22 and § 171.23. As discussed in the NPRM, PHMSA is not adopting provisions for UN FRP portable tanks in the HMR. However, to facilitate limited import and export of these tanks in international commerce, and to gain additional experience with their transport, PHMSA is adding a new paragraph—§ 171.25(c)(5)—that prohibits the general transportation of UN FRP portable tanks designed and constructed in accordance with Chapter 6.10 of the IMDG Code within the United States, yet allows for the tanks to be transported within a single port area in the United States in accordance with the provisions of § 171.25(d) covering the use of the IMDG Code in port areas. This action will maintain the safe transportation of hazardous material under the HMR while facilitating international commerce by permitting the import or export of hazardous materials in UN FRP portable tanks, and limiting their use and movement within the confines of a single port area. DGAC provided comments in support of this revision.

[16] U.N. Econ. Comm'n for Europe, Transportation Division, Agreement Concerning the Int'l Carriage of Dangerous Goods by Road, 110th Sess., ECE/TRANS/300, U.N. Sales No. E. 21. VIII. 1 (2020).

[17] 85 FR 75680 (Nov. 25, 2020).

B. Part 172

Section 172.101 Hazardous Materials Table (HMT)

The HMT summarizes terms and conditions governing transportation of listed hazardous materials under the HMR. For each entry, the HMT identifies information such as the PSN, UN identification number, and hazard class. The HMT specifies additional information or reference requirements in the HMR such as hazard communication, packaging, quantity limits aboard aircraft, and stowage of hazardous materials aboard vessels. PHMSA is making several changes to the HMT as discussed below. For purposes of the Government Publishing Office's typesetting procedures, changes to the HMT appear under three sections of the HMT: ''remove,'' ''add,'' and ''revise.'' Certain entries in the HMT, such as those with revisions to the PSNs, appear as a ''remove'' and ''add.'' Amendments to the HMT include the following:

New HMT Entry

PHMSA is adding a new entry, ''UN3550, Cobalt dihydroxide powder, *containing not less than 10% respirable particles,* Division 6.1, PG I,'' to the HMT. Cobalt is a key strategic mineral used in various advanced medical and technical applications around the world, and it is essential to keep the global supply chains for this material open. This material has a 40-year history of safe global transport as ''UN3077, Environmentally hazardous substance, solid, n.o.s., Class 9'' in different forms, including as crude material directly from mines, high moisture content paste, and very fine refined powders in flexible IBCs rated for PG III. However, recent testing required for compliance with the REACH Regulation in the European Union, and subsequent evaluation against the hazard classification criteria of the EU Classification, Labelling, and Packaging (CLP) Regulation, resulted in a classification of Acute toxicity by inhalation Category 1, which is equivalent to the Division 6.1 hazard classification. As a result of this testing, it was determined that when this material is in fine powder form, it must no longer be transported as Class 9 miscellaneous hazard material. In powder form, cobalt dihydroxide powder must now be classified as a Division 6.1 toxic-by-inhalation solid material, for which a unique UN identification number and associated classification, hazard communication, and packing instructions do not currently exist in the HMT. This change in classification led to the development of the new UN identification number UN3550 and associated transportation requirements by the UNSCOE. To that end, the UNSCOE developed appropriate packaging provisions, including a special packaging condition, which permits the continued use of certain flexible IBCs. PHMSA notes that other forms of cobalt dihydroxide powder may continue to be classified and described as ''UN3077, Environmentally hazardous, solid, n.o.s., 9, PG III.'' Specifically, the UNSCOE addressed shipper concerns that flexible IBCs are not otherwise permitted for transport of Division 6.1 toxic solids, yet there is a 40-year record of safe transport of the refined material as UN3077 material in flexible IBCs, with no recorded accidents, incidents, or health issues. PHMSA is also adding a corresponding special provision (IP22) to indicate that the use of certain flexible IBCs is permitted for UN3550, which is discussed further in § 172.102 of this Section-by-Section Review. The other packaging provisions for this cobalt dihydroxide powder are consistent with those for other Division 6.1 solid materials assigned PG I, such as ''UN3467, Organometallic compound, solid, toxic, n.o.s.'' An entry for UN3550 was also added in the 2023–2024 ICAO Technical Instructions and aligns with the packaging requirements in this final rule. PHMSA agrees with the UN provision to allow for the continued transport of this hazardous material in flexible IBCs, or in accordance with other special provisions and packaging requirements outlined in Part 173. The addition of this new HMT entry will maintain the HMR's safety standard for transportation of Division 6.1 solid materials.

HMT Corrections

PHMSA is making corrections to multiple HMT entries that were inadvertently modified in previous rulemakings. Specifically, for the PGII and PGIII entries for ''UN3129, Water-reactive liquid, corrosive, n.o.s.'' and ''UN3148, Water-reactive liquid, n.o.s.,'' the references to exceptions in § 173.151 in Column 8A were removed and replaced with the word ''None.'' While there are no exceptions for these materials when assigned to PGI, PHMSA did not intend to remove the exceptions for PGII and III materials. Additionally, for the PGIII entry for ''UN3148, Water-reactive liquid, n.o.s.,'' the ''G'' in Column 1, which indicates that a technical name must be provided in association with the proper shipping name, was also inadvertently deleted. PHMSA expects that making these editorial corrections will prevent frustrations in shipping due to the inadvertent removal of the reference to authorized shipping exceptions and prevent confusion regarding the required shipping description. PHMSA also is making a correction to the entry ''UN0512, Detonators, electronic programmable for blasting.'' In HM–215P, PHMSA added three new entries for electronic detonators to distinguish them from electric detonators, which have different functioning characteristics but similar regulatory provisions for their transport. PHMSA incorrectly assigned an obsolete special provision, Special Provision 103, which was removed from the HMR by final rule HM–219C.[18] UN0512 is comparable to the entry UN0255 and therefore should reflect the same special provision, Special Provision 148. Therefore, PHMSA is removing the reference to Special Provision 103 in Column 7 for UN0512 and replacing it with Special Provision 148 consistent with the entry of UN0255. PHMSA expects this correction will remove confusion surrounding additional provisions for these detonators. Lastly, PHMSA is making a correction to the proper shipping name for UN3380, which should read ''Desensitized explosive, solid, n.o.s.'' In the previous HM–215 rulemaking, the word ''explosive'' was inadvertently made plural. This spelling is in conflict with a similar material on the HMT, ''UN3379, Desensitized explosive, liquid, n.o.s.,'' and international regulations. Therefore, PHMSA expects that this correction will remove confusion surrounding the proper shipping name for these materials.

PHMSA is also making a correction to the HMT entry for ''UN1791, Hypochlorite Solutions.'' In HM–215O, PHMSA added stowage codes 53 and 58—which require stowage ''separated from alkaline compounds'' and ''separated from cyanides,'' respectively—to Column 10B of the HMT for several hazardous materials for consistency with changes included in Amendment 39–18 of the IMDG Code. These stowage codes were intended to be applied to several HMT entries to ensure proper segregation between acids and both amines and cyanides, but should not have included UN1791. Therefore, PHMSA is removing stowage codes 53 and 58 from Column 10B for this entry. PHMSA expects that this correction will remove the burden faced by shippers who have had to segregate hypochlorite solutions for compliance with the HMR, which is inconsistent

[18] 85 FR 75680 (Nov. 25, 2020).

with the requirements of the IMDG Code.

Lastly, PHMSA is making a correction to the HMT entry for ''UN3021, Pesticides, liquid, flammable, toxic, *flash point less than 23 degrees C.*'' On December 27, 2022, PHMSA published the HM–260B [19] final rule titled ''Hazardous Materials: Editorial Corrections and Clarifications,'' which intended to only revise the hazardous materials description in Column 2 to italicize ''flash point less than 23 degrees C'' so that it is understood it is not part of the required PSN as it is now reflected in the HMT—''UN3021, Pesticides, liquid, flammable, toxic, *flash point less than 23 degrees C.*'' However, this revision unintentionally left out the PG II line for the ''UN3021, Pesticides, liquid, flammable, toxic, *flash point less than 23 degrees C*'' entry, and thus it was inadvertently revised in the HMT to only show the PG I line of the table entry for this hazardous material description. Therefore, in this final rule, PHMSA is revising the entry under ''UN3021, Pesticides, liquid, flammable, toxic, *flash point less than 23 degrees C*'' to again include the PG II line as it was never intended to be removed, and to avoid confusion by stakeholders whether there is no longer a PG II line with associated references for authorized packaging and transportation conditions for this table entry.

Column (2) Hazardous Materials Descriptions and Proper Shipping Names

Section 172.101(c) describes column (2) of the HMT and the requirements for hazardous materials descriptions and PSNs. PHMSA is consolidating two entries in the HMT that are currently listed under ''UN1169, Extracts, aromatic, liquid'' (PGII and PGIII) and ''UN1197, Extracts, flavoring, liquid'' (PGII and PGIII). Specifically, PHMSA is removing the table entry for ''UN1169, Extracts, aromatic, liquid'' and modifying the PSN associated with the table entry for UN1197 to reflect materials that have been historically transported separately under UN1169 and UN1197. The 22nd revised edition of the UN Model Regulations made these same changes, deleting UN1169 from the Dangerous Goods List and changing the PSN for UN1197 to ''Extracts, liquid, for flavor or aroma'' to remove confusion associated with selection of the appropriate PSNs across the various languages of nations engaged in international shipments of the material. It became apparent that, whether for a flavor extract or aroma extract, the PSNs were often used interchangeably as there is no difference between the two with regard to classification, hazard communication, and packaging for transport. PHMSA agrees that the existence of two interchangeable UN numbers does not provide any additional value and, therefore, is removing the table entry for UN1169 and modifying the PSN for UN1197 to read ''Extracts, liquid, *for flavor or aroma.*'' Additionally, PHMSA is amending the text of paragraph (c)(12)(ii), which outlines requirements for generic or n.o.s. descriptions. The text of this paragraph provides an example using ''Extracts, flavoring, liquid.'' Therefore, PHMSA is amending the wording of that example by replacing ''Extracts, flavoring, liquid'' with ''Extracts, liquid, for flavor or aroma'' to correspond to the amended PSN for UN1197. This action maintains the current level of safety for transportation of liquid extracts.

Column (3) Hazard Class or Division

Section 172.101(d) describes column (3) of the HMT, which designates the hazard class or division corresponding to the PSN of that entry. Consistent with changes adopted in the 22nd revised edition of the UN Model Regulations, PHMSA is changing the primary hazard classification for the entry ''UN1891, Ethyl Bromide,'' from a toxic liquid of Division 6.1 to a Class 3 flammable liquid. This change in classification is consistent with the change adopted in the 2023–2024 ICAO Technical Instructions, as well as the UN Model Regulations, and is based on new test data indicating that the flash point and boiling point of ethyl bromide has a core flammability hazard according to the Class 3 classification criteria of the ICAO Technical Instructions. More specifically, different data sources showed that its flash point of −20 °C (−4 °F) and its boiling point of 38 °C (100.4 °F) meet the criteria for assignment as a Class 3 at the PG II level—the criteria of which is having a flash point <23 °C and boiling point >35 °C. Additionally, rather than classifying ethyl bromide solely as a Class 3 flammable liquid, it was determined that the Division 6.1 hazard still applies and should remain assigned as a subsidiary hazard. This is consistent with the HMR precedence of hazard table in § 173.2a, which states that a material that meets criteria for classification as both Class 3 and Division 6.1 (except for when a material meets the PG I poison-by-inhalation criteria), the flammability hazard takes precedence and is the primary hazard. These changes in hazard class and associated packaging requirements were adopted to ensure that the hazards of ethyl bromide are accurately communicated and appropriately packaged. PHMSA reviewed these findings and agrees it is appropriate to classify ethyl bromide as a flammable liquid, with a subsidiary Division 6.1 hazard. Because of this change in hazard class, additional conforming changes to the HMT entry for ethyl bromide are required in column (6), as discussed below. Additionally, PHMSA expects that clearly identifying the flammability hazard posed by this material will improve safety by ensuring that the material is handled appropriately before and during transport.

Column (6) Label Codes

Section 172.101(g) describes column (6) of the HMT, which contains label codes representing the hazard warning labels required for a package filled with a material conforming to the associated hazard class and proper shipping name, unless the package is otherwise excepted from labeling. The first code is indicative of the primary hazard of the material. Additional label codes are indicative of subsidiary hazards. As discussed above, PHMSA is modifying the primary hazard class for ''UN1891, Ethyl bromide'' to Class 3. Consistent with this change, PHMSA is assigning Class 3 as the primary hazard label and Division 6.1 as a subsidiary hazard label. Consequently, PHMSA is amending column (6) of the HMT for this entry to reflect the warning labels required for the transport of this hazardous material. PHMSA expects that this change will improve safety by clearly communicating the transportation hazards of this material.

Column (7) Special Provisions

Section 172.101(h) describes column (7) of the HMT, which assigns special provisions for each HMT entry. Section 172.102 provides for the meaning and requirements of the special provisions assigned to entries in the HMT. The revisions to column (7) of certain entries in the HMT are discussed below.

Special Provision 396

PHMSA is adding a new special provision, Special Provision 396, and assigning it to ''UN3538, Articles containing non-flammable, non-toxic gas, n.o.s.'' DGAC noted that PHMSA had inadvertently left out Special Provision 396 in column 7 for ''UN3538, Articles containing non-flammable, non-toxic gas, n.o.s.'' PHMSA has revised that editorial error in this final rule. For

[19] 87 FR 79752 (Dec. 27, 2022).

additional information, *see* § 172.102 of the Section-by-Section Review.

Special Provision 398

PHMSA is assigning a newly added special provision, Special Provision 398, which pertains to the potential classification of butylene and butylene mixtures as UN1012. This special provision clarifies that butylene mixtures and certain butylene isomers may be assigned to UN1012, while specifically excluding isobutylene from this UN classification. For additional information, *see* § 172.102 of the Section-by-Section Review.

Special Provisions A4 and A5

PHMSA is assigning Special Provision A4 to the entry ''UN2922, Corrosive liquid, toxic, n.o.s.'' and Special Provision A5 to the entry ''UN2923, Corrosive solid, toxic, n.o.s.'' Special Provisions A4 and A5 address liquids and solids in PG I that also pose an inhalation toxicity hazard by limiting or prohibiting their transportation on aircraft. In principle, all liquids or solids that have an inhalation toxicity hazard, and assigned PG I, should be subject to one of the two special provisions, as appropriate. However, UN2922 and UN2923 are assigned Class 8 as the primary hazard and Division 6.1 as a subsidiary hazard because of classification guidelines that require hazardous materials that meet the criteria of Class 8, and have an inhalation toxicity of dusts and mists (LC50) in the range of PG I, but toxicity through oral ingestion or dermal contact only in the range of PG III or less, must be assigned to Class 8 as the primary hazard rather than Division 6.1. In reviewing these provisions, the ICAO Dangerous Goods Panel (DGP) determined that additional restrictions should be implemented for these hazardous materials as the corrosive classification assigned to UN2922 and UN2923 does not negate the inhalation toxicity hazard. Because of the inhalation hazard posed by these materials, the 2023–2024 ICAO Technical Instructions included an amendment to impose quantity limits for transportation of these materials by air. PHMSA agrees with this determination and therefore is assigning Special Provision A4 to UN2922, which prohibits this material from transport on passenger and cargo-only aircraft. PHMSA also is assigning Special Provision A5 to UN2923, which prohibits this material on passenger aircraft and limits the amount that may be transported on cargo-only aircraft. PHMSA expects that correcting this conflict will improve safety by prohibiting corrosive materials that also pose inhalation hazards on passenger aircraft and limiting their transport on cargo-only aircraft.

Special Provisions A224 and A225

PHMSA is adding two new air special provisions, A224 and A225, and assigning them to HMT entries ''UN3548, Articles containing miscellaneous dangerous goods, n.o.s.'' and ''UN3538, Articles containing non-flammable, non-toxic gas, n.o.s.,'' respectively. These special provisions allow for the transport on both passenger aircraft and cargo-only aircraft under certain conditions. For additional information, *see* 172.102 of the Section-by-Section Review. Also, *see* § 172.102 of the Section-By-Section Review below for a detailed discussion of the special provision amendments addressed in this final rule. DGAC and MDTC provided comments in support of this revision.

Column (8) Packaging

Section 172.101(i) explains the purpose of column (8) in the HMT. Columns (8A), (8B), and (8C) specify the applicable sections for exceptions, non-bulk packaging requirements, and bulk packaging requirements, respectively. Columns (8A), (8B), and (8C) are completed in a manner which indicates that ''§ 173.'' precedes the designated numerical entry. Column (8A) contains exceptions from some of the requirements of this subchapter. The referenced exceptions are in addition to those specified in subpart A of part 173 and elsewhere in subchapter C. The word ''None'' in this column means no packaging exceptions are authorized, except as may be provided by special provisions in column (7). For example, the entry ''151'' in column (8A), associated with the proper shipping name ''Nitrocellulose with water,'' indicates that, for this material, packaging exceptions are provided in § 173.151 of this subchapter.

PHMSA is removing references to § 173.151, which provides exceptions for Class 4 hazardous materials, in column (8A), and adding the word ''None'' for three solid desensitized explosive entries: ''UN2555, Nitrocellulose with water *with not less than 25 percent water by mass;*'' ''UN2556, Nitrocellulose with alcohol *with not less than 25 percent alcohol by mass, and with not more than 12.6 percent nitrogen, by dry mass;*'' and ''UN2557, Nitrocellulose, *with not more than 12.6 percent nitrogen, by dry mass* mixture with *or* without plasticizer, with or without pigment.'' These changes remove the applicability of the limited quantity exceptions for these hazardous materials to correct an inconsistency regarding solid desensitized explosives. Consistent with the UN Model Regulations, PHMSA has not authorized limited quantity packaging exceptions for 30 other solid desensitized explosives.[20] Solid desensitized explosives are explosive substances that are wetted with water or alcohols, or are diluted with other substances, to form a homogeneous solid mixture to suppress their explosive properties. Like PG I materials, solid desensitized explosives in PG II are specifically prohibited from transport under the limited quantity provisions in the UN Model Regulations. However, this inconsistency was identified with respect to air transport by the ICAO DGP, resulting in a similar amendment in the 2023–2024 ICAO Technical Instructions. In this final rule, PHMSA is also making related editorial amendments in § 173.27, general requirements for transportation by aircraft. (See additional discussion in § 173.27 of Section-by-Section Review.) PHMSA expects that correcting this oversight to require these nitrocellulose mixtures be transported in accordance with all requirements of the HMR, rather than permitting the use of the limited quantity exceptions in § 173.151, will not only add an additional level of safety, but also facilitate the transport of these materials by streamlining packaging and hazard communication requirements to be consistent with requirements for similar materials and with international regulations.

Column (9) Quantity Limitations

Section 172.101(j) explains the purpose of column (9) in the HMT. Column (9) specifies quantity limitations for packages transported by air and rail. Column (9) is divided into two columns: column (9A) provides quantity limits for passenger aircraft/rail, and column (9B) provides quantity limits for cargo-only aircraft.

Consistent with changes adopted in the 2023–2024 edition of the ICAO Technical Instructions, PHMSA is amending the quantity limitations for UN 1891, Ethyl bromide, when

[20] UN1310, UN1320, UN1321, UN1322, UN1336, UN1337, UN1344, UN1347, UN1348, UN1349, UN1354, UN1355, UN1356, UN1357, UN1517, UN1571, UN2555, UN2556, UN2557, UN2852, UN2907, UN3317, UN3319, UN3344, UN3364, UN3365, UN3366, UN3367, UN3368, UN3369, UN3370, UN3376, UN3380, and UN3474.UN1517, UN1571, UN2555, UN2556, UN2557, UN2852, UN2907, UN3317, UN3319, UN3344, UN3364, UN3365, UN3366, UN3367, UN3368, UN3369, UN3370, UN3376, UN3380, and UN3474.

transported by passenger aircraft. Previously, the maximum net quantity per package for passenger aircraft was 5 L on the Dangerous Goods List of the ICAO Technical Instructions; this same quantity limit is currently in place for passenger aircraft, as indicated in column (9A) of the HMT. As a result of the reclassification of UN1891 as a Class 3 flammable liquid, the permitted quantity was reduced in the ICAO Technical Instructions to 1L per packaging. This change is in line with the quantity limits for many other Class 3 materials. PHMSA is making a corresponding change for passenger aircraft limits in column (9A). With regard to cargo-only aircraft, no changes to the 60 L maximum net quantity were made in the ICAO Technical Instructions, as that limit is the same for Class 3 and Division 6.1 materials. PHMSA expects that this change will provide an additional level of safety commensurate to the newly recognized flammability hazard posed by this material.

PHMSA is modifying the packaging limits aboard cargo-only aircraft for three battery entries: ''UN2794, Batteries, wet, filled with acid, electric storage;'' ''UN2795, Batteries, wet, filled with alkali, electric storage;'' and ''UN3292, Batteries, containing sodium.'' Specifically, these changes limit the quantity per packaging to 400 kg, as there is currently no limit for these items. Typically, these articles must be packed in UN specification packagings, and 400 kg is the maximum quantity permitted in such packagings. These changes are consistent with changes made in the 2023–2024 ICAO Technical Instructions, which were made as a correction to an inconsistency between the ICAO Technical Instructions and the UN Model Regulations. Therefore, in column (9B) of the HMT, the words ''no limit'' will be replaced by 400 kg. PHMSA expects that this change will streamline packaging requirements by providing packaging limits for similar items in similar packagings, consistent with analogous international regulations. This streamlining will also increase safety by increasing clarity on the packaging limits for these similar items.

Section 172.102 Special Provisions

Section 172.102 lists special provisions applicable to the transportation of specific hazardous materials. Special provisions include packaging requirements, prohibitions, and exceptions applicable to particular quantities or forms of hazardous materials. PHMSA is making the following revisions to the special provisions in this section:

Special Provision 78

Special Provision 78 currently states that ''UN1002, Air, compressed'' may not be used to describe compressed air that contains more than 23.5% oxygen. It also stipulates that compressed air containing more than 23.5% oxygen must be shipped using the description ''UN3156, Compressed gas, oxidizing, n.o.s.,'' which has a Class 5 subsidiary hazard classification. PHMSA is amending Special Provision 78 to provide additional clarity with regard to the permitted use of the proper shipping description UN1002. In an effort to address specific mixtures of nitrogen and oxygen that are commercially called ''synthetic air,'' the 22nd revised edition of the UN Model Regulations includes a new special provision that was intended to clarify that ''synthetic air'' may be transported under UN1002, provided that it does not contain more than 23.5% oxygen. ''Synthetic air'' is typically a mixture containing up to 23.5% oxygen with the balance being nitrogen. This mixture is used in a variety of applications, including medical and non-medical, and may be used when ambient air is not sufficient due to the presence of contaminants. This new special provision specifies that mixtures of nitrogen and oxygen containing not less than 19.5% and not more than 23.5% oxygen by volume may be transported under UN1002 when no other oxidizing gases are present. It also states that a Division 5.1 subsidiary hazard label is not required for any concentrations within this limit. While this language is not drastically different than the current language in the HMR, PHMSA expects that rewording Special Provision 78 to include the 19.5% lower bound for oxygen and the note regarding the use of the Division 5.1 subsidiary hazard label will improve safety by providing clearer and more useful instructions for shippers of compressed synthetic air.

Special Provision 156

PHMSA is amending Special Provision 156 to require that, when transported by air, a shipping paper, such as an air waybill, accompanying the shipment must indicate that the package containing asbestos is not restricted for shipment. Currently, this special provision excepts asbestos from the requirements of 49 CFR Subchapter C when it is immersed or fixed in a natural or artificial binder—such as cement, plastics, asphalt, resins, or mineral ore—in such a way that no escape of hazardous quantities of respirable asbestos fibers can occur. It was noted that confusion over whether a shipment was or was not excepted from the regulations had led to delays and frustrated shipments. The 2023–2024 ICAO Technical Instructions amended a similar special provision to assist in providing evidence of compliance with its requirements. PHMSA's revision to Special Provision 156 requires that, when transported by air, packages or shipping documentation be marked to indicate that the package containing asbestos is not restricted for shipment. PHMSA expects that this requirement will facilitate the safe shipment of asbestos by preventing them from being mistaken as fully regulated hazardous materials.

Special Provision 387

Special Provision 387 provides shippers of polymerizing substances with information regarding stabilization requirements for their shipments. As discussed below, in an earlier rulemaking, PHMSA placed sunset dates on the HMR provisions concerning transport provisions for polymerizing substances to allow time for the completion of research on various topics concerning their transport, and to gather and review empirical evidence concerning the appropriate transport provisions for polymerizing substances. In line with other amendments in this final rule for the transport of polymerizing substances, PHMSA is amending Special Provision 387 to remove the sunset date of January 2, 2023. The result of this amendment is that the existing stabilization requirements noted in this special provision remain and the sunset date is removed. DGAC and Dow Chemical provided comments in support of this revision. See 173.21 of the Section-by-Section Review for the full discussion of changes pertaining to polymerizing substances.

Special Provision 396

PHMSA is adding a new special provision, Special Provision 396, and assigning it to ''UN3538, Articles containing non-flammable, non-toxic gas, n.o.s,'' to authorize the transport of large and robust articles (*e.g.,* transformers) that include cylinders containing UN1066 ''Nitrogen,'' UN1956 ''Compressed gas N.O.S.,'' or UN1002 ''Air, compressed'' with the valves open to allow low quantities of gas to be constantly supplied through a pressure regulator from a gas cylinder connected to the transformer. Similar provisions were added in the 22nd revised edition of the UN Model Regulations and Amendment 41–22 of the IMDG Code to

address shipments of transformers, which are typically pressurized with nitrogen or air but are not gas tight. Prior to 2020, transformers were transported as ''UN 3363, Dangerous Goods in Machinery/Apparatus;'' however, the packing provisions for UN3363 imposed quantity limits requiring multiple approvals from competent authorities as specified in Special Provision 136 in the HMR (SP 301 in the UN Model Regulations). Following more recent amendments to the UN Model Regulations, these transformers were eligible for transport under UN 3538. The provisions that allow these transformers to be transported unpackaged do not explicitly require the transformer to be gas-tight but instead require the valves to be closed during transport. To obviate the need for an approval each time such transformers are transported, a new special provision was added to the 22nd revised edition of UN Model Regulations because these transformers only emit small quantities of nitrogen or synthetic air, which are not flammable, toxic, corrosive, or oxidizing. PHMSA is making several safety controls in shipments of this type that are largely consistent with the provisions adopted in the UN Model Regulations and the IMDG Code. These controls include requiring the following: cylinders must be connected to the article through pressure regulators and have fixed piping to keep the pressure below 35 kPa (0.35) bar; cylinders must be secured to prevent shifting; cylinders and other components must be protected from damage and impacts during transport; the shipping paper must include a reference to shipping under this special provision; and if placed inside a cargo transport unit (CTU), the CTU must be well ventilated. PHMSA notes that these international regulations require marking the CTU with the asphyxiation warning mark for CTUs. The HMR has not adopted this mark and is not doing so at this time. PHMSA is not revising this mark because it views the additional controls—specifically, the indication on the shipping paper, as well as other operational controls noted in the special provision—as providing sufficient warning to those in the transport chain of the dangers present and mitigation of potential hazards. PHMSA expects that the addition of this special provision will facilitate the transport of this specialized machinery without imposing excessive manufacturing requirements to ensure gas tightness to prevent the release of relatively innocuous gases during transport.

Special Provision 398

PHMSA is adding Special Provision 398, pertaining to the classification of hazardous materials under UN1012, Butylene. This new special provision clarifies that butylene mixtures and certain butylene isomers may be assigned to UN1012, while specifically excluding UN1055, Isobutylene, from this UN classification. Butylene, also known as butene, includes four different isomers, corresponding to one general chemical formula, C4H8. One of these isomers is isobutylene, which, while similar to the other three isomers, has been assigned a separate UN number, UN1055, which has its own set of packaging provisions. To avoid ''UN1055, Isobutylene'' being classified and transported under UN1012, this amendment facilitates the consistent and proper classification of this group of hazardous materials. This clarification for UN1012, Butylene, was added in the 22nd revised edition of the UN Model Regulations for consistency with European regulations, which made similar changes to avoid ''UN1055, Isobutylene'' being classified and transported under UN1012. PHMSA is adding this clarifying special provision with the expectation that it will facilitate consistent and proper classification of this group of hazardous materials.

Special Provision 421

Special Provision 421 is currently assigned to the four polymerizing substance entries in the HMT.[21] Currently, this special provision notes that these entries will no longer be effective on January 2, 2023, unless extended or terminated prior to this date. As discussed in ''Section I. Executive Summary'' section of this rulemaking, PHMSA had placed sunset dates on the HMR provisions concerning transport provisions for polymerizing substances to allow time for the completion of research on various topics concerning their transport, and to gather and review empirical evidence concerning the appropriate transport provisions for polymerizing substances. As we have completed this review, we are deleting Special Provision 421 and maintaining the existing polymerizing substance HMT entries. DGAC provided comments in support of this revision.

Special Provision A54

Special Provision A54 specifies that, irrespective of the quantity limits in column (9B) of the § 172.101 table, a lithium battery, including a lithium battery packed with, or contained in, equipment that otherwise meets the applicable requirements of § 173.185, may have a mass exceeding 35 kg, if approved by the Associate Administrator prior to shipment. PHMSA is amending this special provision to require that, when this special provision is used, the special provision number must be indicated on the shipping paper. PHMSA expects that this amendment will enhance safety by improving the communication of potential hazards, as without such indication, the need for shipment acceptance staff to check and ensure a copy of the approval accompanying the shipment can potentially be missed.

Special Provisions A224 and A225

The 2023–2024 ICAO Technical Instructions added two new special provisions permitting the transport of articles containing hazardous materials aboard passenger and cargo-only aircraft. Currently these articles are forbidden from transport on passenger and cargo-only aircraft, as specified in column (9) of the HMT. However, the ICAO DGP developed these packaging provisions, which include provisions that ensure appropriate gas containment during transport. The aim of these special provisions was to facilitate the transport of large articles containing environmentally hazardous substances (such as aircraft landing gear struts filled with hydraulic fluid) and large articles containing a non-flammable, non-toxic gas (such as new types of magnetic resonance imaging (MRI) scanners, which often contain compressed helium as well as lithium cells or batteries). These amendments were adopted in the 2022–2023 ICAO Technical Instructions, and PHMSA is mirroring these provisions by adding two new air-specific special provisions, A224 and A225, and assigning them to HMT entries ''UN3548, Articles containing miscellaneous dangerous goods, n.o.s.'' and ''UN 3538, Articles containing non-flammable, non-toxic gas, n.o.s.,'' respectively.

These special provisions allow for the transport of large articles containing a non-flammable, non-toxic gas or environmentally hazardous substances on both passenger aircraft and cargo aircraft only under certain conditions. Specifically, under Special Provision A224, ''UN3548, Articles containing miscellaneous dangerous goods, n.o.s.'' are permitted on passenger and cargo-only aircraft, provided that the only dangerous goods in the article are environmentally hazardous substances, except for lithium cells or batteries that comply with § 173.185(c) (*e.g.,* the

[21] UN3531, UN3532, UN3533, and UN3534.

article may contain an environmentally hazardous substance and lithium cell or battery that complies with § 173.185(c)).

Similarly, under Special Provision A225, ''UN3538, Articles containing non-flammable, non-toxic gas, n.o.s.'' are permitted aboard passenger and cargo-only aircraft, provided that the article contains only a Division 2.2 gas that does not have a subsidiary hazard excluding refrigerated liquefied gases and other gases forbidden for transport on passenger aircraft, except for lithium cells or batteries that comply with § 173.185(c) (*e.g.,* the article may contain a non-refrigerated liquefied gas or otherwise forbidden Division 2.2 gas without a subsidiary hazard and a lithium cell or battery that complies with § 173.185(c)). In addition to containing only the permitted hazardous materials, the special provision also requires that shippers comply with additional packaging requirements specified in § 173.232, and that the special provision be indicated on shipping documentation.

The ICAO DGP agreed that these provisions were appropriate given that environmentally hazardous substances pose a very low hazard in air, and that non-flammable, non-toxic gases without subsidiary hazard are already allowed on both passenger and cargo-only aircraft as well as certain other articles containing similar gases. PHMSA agrees and expects that, in addition to aligning the HMR with recent changes added to the 2023–2024 ICAO Technical Instructions, the addition of these provisions will facilitate the transport of these materials by air while maintaining the current level of safety for air transport of certain hazardous materials. MDTC provided a comment in support of these revisions.

IP Codes

IP Codes are special provisions that are assigned to specific commodities and applicable when that commodity is transported in IBCs. Table 2 in § 172.102 specifies the requirements corresponding to the IP Code indicated in column (7) of the HMT. In this final rule, PHMSA is amending the text of IP15 and adding a new IP Code, IP22.

IP15

PHMSA is amending the text of IP15 to clarify language pertaining to the authorized period of use of composite IBCs. Currently, IP15 states that for IBCs containing UN2031 with more than 55% nitric acid, rigid plastic IBCs and composite IBCs that have a rigid plastic inner receptacle are authorized for two years from the date of IBC manufacture. A change to a corresponding special provision was adopted in the 22nd revised edition of the UN Model Regulations to make clear that the authorized two-year period of use specifically refers to the duration of use of the inner receptacle of composite IBCs and not to the outer framework. The intent of this requirement is to limit the inner receptacle for composite IBCs to the two-year period of use when used for this specific corrosive material, rather than requiring that the outer framework be inspected as often. The entire composite IBC remains subject to the five-year inspection interval, prescribed in § 180.352. This change in the UN Model Regulations was in response to mistranslations of the UN Model Regulations, which led to inconsistent maintenance of composite IBCs. While PHMSA is not aware of any issues surrounding the language in IP15, PHMSA expects that making this editorial change will ensure international users are not confused by the text of the HMR, and this clarification will enhance safe transport of hazardous materials in such IBCs.

IP22

As discussed earlier, PHMSA is adding a new IP code, IP22, for the new entry, ''UN 3550, Cobalt dihydroxide powder, *containing not less than 10% respirable particles.*'' This special provision authorizes the transport of Cobalt dihydroxide powder, a Division 6.1 solid, in flexible IBCs that are equipped with siftproof liners that prevent any egress of dust during transport. This hazardous material was recently classified as a solid with a toxic-by-inhalation hazard. Prior to this Division 6.1 classification, cobalt dihydroxide had been transported as ''UN3077, Environmentally hazardous substance, solid, n.o.s., Class 9'' in unlined flexible IBCs. However, this reclassification posed a problem for shippers because flexible IBCs are not authorized for Division 6.1 toxic solids. In response to the recent EU GHS changes, many shippers stopped using unlined flexible IBCs and began using lined 13H3 or 13H4 flexible IBCs to prevent the release of dust.[22] Additionally, the industry also developed a new design type flexible IBC with an improved liner to prevent egress of dust. This new design type, 13H3 flexible IBC, has been tested and approved to PG I by international competent authorities. Consequently, to address the packaging problem shippers faced as a result of new classification criteria, the UNSCOE created a special provision that allows this material to be transported in lined siftproof packagings. This decision was based on the 40-year record of safe transport in this material in PG III packagings, as well as the additional level of sift-proofness provided by the new design track record of the new siftproof packagings. PHMSA agrees with the UNSCOE's determination that siftproof flexible IBCs are appropriate packagings for this material and expects that this special provision will avoid unnecessary disruptions in the transport of this essential raw material while still ensuring safe transport of this material. The lack of a UN entry for this specific combination of physical and hazardous attributes—solid and toxic-by-inhalation—led to the development of this new UN entry by the UNSCOE. More specifically, UN3550 was created for cobalt dihydroxide to resolve the packaging and transport problem faced by shippers because of the new Division 6.1 classification. Consequently, based on the record of safe transport by multi-modal means in flexible IBCs, with no recorded accidents, incidents, or health issues as UN3077, the UNSCOE's resolution of this packaging conflict was to develop a new UN number, assigning appropriate packing provisions and creating a special packaging condition which permits the use of flexible IBCs.

C. Part 173

Section 173.4b

Section 173.4b specifies the hazard criteria and packaging requirements to qualify for the de minimis exception—*i.e.,* exceptions from certain HMR requirements for very minor amounts of hazardous material. For non-infectious biological specimens that contain minor amounts of preservatives that are a hazardous material, PHMSA is adding a reference to formaldehyde solution in paragraphs (b)(1)(i) and (b)(1)(ii) to clarify that the conditions for packing of the specimens applies to formaldehyde solution too. Currently, paragraph (b) excepts non-infectious biological specimens, such as those of mammals, birds, amphibians, reptiles, fish, insects, and other invertebrates, containing small quantities of chemical preservatives like ethanol or formaldehyde solution from the HMR, provided certain conditions are met. For example, paragraph (b)(1) provides instruction for when alcohol or an alcohol solution is used, such as when a specimen is placed in a plastic bag, that any free liquid in the bag must not exceed 30 mL. The ICAO Technical Instructions include a similar instruction, yet during a review of the

[22] *https://unece.org/DAM/trans/doc/2019/dgac10c3/UN-SCETDG-56-INF19e.pdf.*

ICAO Technical Instructions, the ICAO DGP noted that the exception does not address when formaldehyde solutions are used as preservatives for specimens; thus, there was no specified limit on the amount of free liquid formaldehyde solution that may be in a packaging. Consequently, the 2023–2024 ICAO Technical Instructions include an amendment to the de minimis provisions to specify limits for formaldehyde solutions. PHMSA agrees with this clarifying amendment and expects that adopting a similar change will enhance safety by removing uncertainty about whether the quantity limits also apply to formaldehyde solutions. PHMSA received a comment from the MDTC in support of this revision.

Section 173.21

Section 173.21 describes situations in which offering for transport or transportation of certain materials or packages is forbidden. Examples of such forbidden shipments include materials designated as ''Forbidden'' in Column (3) of the HMT; electrical devices that are likely to generate sparks and/or a dangerous amount of heat; and materials that are likely to decompose or polymerize and generate dangerous quantities of heat or gas during decomposition or polymerization. This last group of materials is addressed in paragraph (f) of this section, which outlines the conditions under which materials that are likely to decompose or polymerize unless stabilized or inhibited in some manner (*e.g.,* with temperature controls or chemical stabilization) are authorized for transport.

PHMSA is lowering the temperature threshold for certain materials transported in portable tanks that require temperature control. Specifically, this amendment lowers this threshold temperature for a material that is likely to decompose with a self-accelerated decomposition temperature (SADT), or polymerize with a self-accelerated polymerization temperature (SAPT) from 50 °C (122 °F) to 45 °C (113 °F) when transported in portable tanks. This means that portable tanks containing materials likely to decompose or polymerize at temperatures greater than 45 °C are not required to be stabilized or inhibited by temperature control. In an earlier rulemaking, HM–215N, PHMSA gave notice that at that time, it would not adopt reductions in temperature thresholds for shipments in portable tanks, and maintained a 50 °C (122 °F) threshold for requiring temperature control to allow for additional time to conduct research on the impacts of such a change and to allow additional time to fully consider the issue. However, PHMSA-sponsored research, which was completed in February 2021 by APT Research, Inc. (APT),[23] has informed our revisions in this final rule. That research aimed to gather more information concerning temperature control of polymerizing substances in portable tanks, and testing requirements for these substances intended to be transported in portable tanks or intermediate bulk containers (IBCs), as these two areas of safety controls in the HMR differed from those adopted in the international consensus standards and regulations. The report following research conducted by APT noted that ''relaxing the temperature control requirements as proposed by HM–215N is assessed to be an appropriate approach since it will harmonize U.S. regulations with international requirements and no additional hazards were identified for any common polymers during transport. Polymers in industry with SAPTs approaching 45 °C or 50 °C were found to be uncommon.'' PHMSA agrees with this assessment and is lowering this temperature threshold at which temperature control is required for portable tanks containing a material that is likely to decompose with a SADT, or polymerize with a SAPT from 50 °C (122 °F) or less to 45 °C (113 °F) or less. Although the APT research focused on polymerizing materials, PHMSA believes decomposing materials behave similarly and has opted to apply the change to both material types. PHMSA believes this amendment will help facilitate international transportation of these goods while maintaining the high standard of safety in the HMR for transportation of decomposing and polymerizing materials. To that end, PHMSA also is amending the table in paragraph (f)(1) to accommodate the specific temperature controls applicable to decomposing and polymerizing substances transported in portable tanks. This amendment aligns the HMR with temperature thresholds for substances with SADTs and SAPTs transported in portable tanks with those found in the UN Model Regulations and the IMDG Code. Further, based on this change specific to use of portable tanks, PHMSA is revising the table in paragraph (f)(1) to include packaging type as a factor in determining the criteria for control temperatures and emergency temperatures. Lastly, PHMSA is amending paragraph (f) to provide a reference to the lower threshold of 45 °C (113 °F) for portable tanks and include a reference to language concerning organic peroxides that require temperature control. Paragraph (f)(2) is revised to (f)(2)(i)–(iii) to indicate general temperature control requirements for organic peroxides by type. These requirements are consistent with the UN Model Regulations and ensure that appropriate temperature control provisions are applied to organic peroxides not specifically listed in the Organic Peroxide Table in § 173.225. DGAC and Dow Chemical provided comments in support of this revision.

Additionally, to fully adopt these changes, PHMSA is removing the phaseout language currently found in (f)(1)(i), which states that the provisions concerning polymerizing substances in paragraph (f) will be effective until January 2, 2023. Finally, based on results of the research, PHMSA is maintaining the current defining criteria for polymerizing substances in § 173.124, that a polymerizing substance must successfully pass the UN Test Series E at the ''None'' or ''Low'' level, or achieve equivalent criteria using an alternative test method with the approval of the Associate Administrator, prior to selection of an appropriate portable tank or IBC. Dow chemical and DGAC provided comments in support of this proposal.

Section 173.27

Section 173.27 outlines general requirements for transportation by aircraft, including requirements and limitations for hazardous materials transported in limited quantities. Currently, the provisions for combination packagings in paragraph (f)(2) specify that materials or articles not authorized as a limited quantity for transportation by aircraft include all PG I materials; self-reactive flammable solids in Division 4.1; spontaneously combustible materials in Division 4.2; and liquids that are dangerous when wet in Division 4.3. The ICAO Technical Instructions included similar language for Division 4.1 materials by allowing non-self-reactive Division 4.1 materials assigned to PG II or PG III to be transported as limited quantities. However, the ICAO DGP identified a conflict with limited quantity provisions in the ICAO Technical Instructions and the limited quantity provisions in the UN Model Regulations pertaining to four Division 4.1 material, assigned PG II: ''UN 2555, Nitrocellulose with water with not less than 25 percent water by mass;'' ''UN 2556, Nitrocellulose with alcohol with not less than 25 percent alcohol by mass, and with not more than 12.6

[23] Report can be accessed in Docket No. PHMSA–2021–0092 on *www.regulations.gov.*

percent nitrogen, by dry mass;'' ''UN 2557, Nitrocellulose, with not more than 12.6 percent nitrogen, by dry mass mixture with or without plasticizer, with or without pigment;'' and ''UN 2907, Isosorbide dinitrate mixture with not less than 60 percent lactose, mannose, starch or calcium hydrogen phosphate.'' Despite not being defined as self-reactive, the UN Model Regulations have never included these specific Division 4.1 flammable solid materials for transport as limited quantities. The ICAO Technical Instructions were amended for consistency with the UN Model Regulations to clearly indicate that the transport of these four PG II materials in Division 4.1 are not authorized for transportation by aircraft as limited quantities. PHMSA received a comment from Dangerous Goods Advisor noting that the inclusion of UN 2555, UN 2556, UN 2557, and UN 2907 in § 173.27(f)(2)(i)(D) seems unnecessary and could downplay the additional inapplicability to the other 30 desensitized explosives listed in the HMT. After reviewing the list of the other desensitized explosives, PHMSA determined that all 30 other desensitized explosives entries are PG I materials in the HMT. PG I materials are already excluded from the limited quantities section in § 173.27(f)(2)(i)(A). While PHMSA understands that listing the UN numbers in § 173.27(f)(2)(i)(D) is somewhat redundant with removing the reference to § 173.151 for the relevant UN number in the HMT, PHMSA asserts that listing the UN number in § 173.27 provides reinforcing information that these PG II desensitized explosives are not eligible to be shipped as limited quantities. PHMSA is adding language in § 173.27(f)(2)(i)(D) to explicitly include the UN identification numbers for these materials, indicating that these materials may not be transported as limited quantities by aircraft. PHMSA expects this change will add an additional level of safety by correcting this packaging provision, which has been inconsistent with those in place for materials that pose similar hazards.

Section 173.124

Section 173.124 outlines defining criteria for Divisions 4.1 (Flammable solid), 4.2 (Spontaneously combustible), and 4.3 (Dangerous when wet material). In an earlier rulemaking, PHMSA placed phaseout dates on the HMR provisions concerning transport provisions for polymerizing substances to allow time for the completion of research on various topics concerning their transport, and to gather and review empirical evidence concerning the appropriate transport provisions for polymerizing substances. In line with other amendments in this final rule for the transport of polymerizing substances, PHMSA is removing paragraph (a)(4)(iv), which has the phaseout date of January 2, 2023. The result of this amendment will be to remove the phaseout date and keep the existing requirements—as outlined in paragraph (a)(4)—effective beyond the January 2, 2023, date.

Section 173.137

Section 173.137 prescribes the requirements for assigning a packing group to Class 8 (corrosive) materials. PHMSA is authorizing the use of an additional test method, Test No. 439, ''*In Vitro* Skin Irritation: Reconstructed Human Epidermis Test Method,'' as well as editorial changes to this section to provide clarity regarding the use of the authorized OECD Guidelines for the Testing of Chemicals.

Currently, the HMR requires offerors to classify Class 8 materials and assign a packing group based on tests performed in accordance with various OECD Guidelines for the Testing of Chemicals (TG), including a skin corrosion test (*in vivo*) and various *in vitro* testing guidelines that do not involve animal testing. Data obtained from the currently authorized test guidelines is the only data acceptable for classification and assignment of a packing group. Specifically for PG I, II, or III determinations, the HMR authorizes the use of OECD Guidelines for the Testing of Chemicals, Test No. 435, ''*In Vitro* Membrane Barrier Test Method for Skin Corrosion,'' and Test No. 404, ''Acute Dermal Irritation/Corrosion'' (an *in vivo* test method). The HMR also authorizes the use of OECD Test No. 430, ''*In Vitro* Skin Corrosion: Transcutaneous Electrical Resistance Test (TER),'' and Test No. 431, ''*In Vitro* Skin Corrosion: Reconstructed Human Epidermis (RHE) Test Method;'' however, the scope of what these tests can determine is limited. For that reason, Test No. 430 is authorized for use only to determine whether a material is corrosive or not; materials that are determined to be corrosive using this test require additional testing using Test Nos. 435 or 404 or assignment to the most conservative packing group, PG I. Similarly, Test No. 431 may also be used to determine whether or not a material is corrosive; however; while this can identify when a corrosive must be assigned PG I, it cannot differentiate between PG II and III materials. Consistent with the UN Model Regulations, when this method does not clearly distinguish between PG II or PG III, the HMR allows the material to be transported as PGII without further *in vivo* testing. Consistent with changes made to the 22nd revised edition of the UN Model Regulations, PHMSA is authorizing an additional TG, OECD Test No. 439, ''*In Vitro* Skin Irritation: Reconstructed Human Epidermis Test Method,'' as an authorized test, which may be used to exclude a material from classification as a corrosive material. Test No. 439 was adopted in the UN Model Regulations because it provides another means of testing, without the use of live animals, that can easily identify materials as non-corrosive. However, while Test No. 439 may be used for the hazard identification of irritant chemicals, it is limited in that it simply allows materials to be identified as either corrosive or non-corrosive to skin. Because this test method only identifies the material as corrosive or not, the UN Model Regulations added an additional provision requiring that materials, which are tested using Test No. 439 and indicate corrosivity, must be assigned to the most conservative PG (*i.e.,* PG I), unless additional tests are performed to provide more specific data that can be used to assign a less conservative PG. The addition of Test No. 439 as an authorized test method will provide greater flexibility for shippers to classify, package, and transport corrosive material, while maintaining the HMR safety standard for transport of corrosive materials.

With regard to the editorial changes in this section, PHMSA is amending the text of this section to provide clarity regarding the authorized OECD Testing of Chemicals. Additionally, PHMSA is amending the last paragraph of the introductory text, which currently states that assignment to packing groups I through III must be made based on data obtained from tests conducted in accordance with OECD Guideline Number 404 or Number 435 in order to remove the reference to Test No. 435. Since its update in 2015, the criteria for packing group assignments in Test No. 435 are no longer the same as the criteria for Test Guideline 404. PHMSA expects that these amendments will enhance safety by providing clarity regarding the proper testing and assignment of packing groups, and promote efficiency by streamlining the assignment of packing groups.

Section 173.151

Section 173.151 contains exceptions for Class 4 hazardous materials. In the NPRM, PHMSA proposed to add ''151'' to column 8a of the HMT for ''UN 3148, Water-reactive liquid, n.o.s.'' However, § 173.151(d) currently only refers to

Division 4.3 ''solid'' dangerous when wet materials, which is contradictory to the liquid state of UN 3148. In this final rule, PHMSA is making an editorial revision to § 173.151(d), which currently contains only the words ''solids'' to describe Division 4.3 (self-reactive) materials. PHMSA is revising this paragraph to include ''solids'' and ''liquids'' to accurately reflect that Division 4.3 materials could be either in a solid or liquid state.

Section 173.167

Section 173.167 contains the packaging instructions and exceptions for ''ID8000, Consumer commodities.'' The ID8000 entry was added to the HMR in final rule HM–215K,[24] with the intent of aligning the HMR with the ICAO Technical Instructions for the air transportation of limited quantities of a consumer commodity material. Based on inquiries from shippers and carriers, PHMSA understands that confusion exists regarding the requirements for hazard communication and the ability to withstand pressure differential for packages of a ''ID8000, Consumer commodity'' material when moved by modes other than air. In 2012 and 2017, PHMSA issued letters of interpretation regarding the applicability and hazard communication requirements for ID8000 shipments.[25] Both of these letters of interpretation recognized that ID8000 shipments are inherently ''limited quantity'' and provided the opinion that for transportation by highway, rail, and vessel, ID8000 packages could be marked with the standard marking found in § 172.315(a)(1) (*i.e.,* limited quantity mark without the ''Y''). In 2022, PHMSA received a petition for rulemaking, designated P–1762,[26] from the Council on the Safe Transportation of Hazardous Articles (COSTHA) relating to ID8000. In its petition, COSTHA requested that PHMSA revise § 173.167 to make it clear that packages prepared under this section may be offered for transportation and transported by all modes.

In consideration of P–1762 and consistent with these letters of interpretation regarding the requirements for ID8000 shipments, PHMSA is revising the requirements in § 173.167 for ''ID8000, Consumer commodity'' materials. The intent of this revision is to clearly address requirements for all modes of transportation, while continuing to recognize that the history and intent of the ''ID8000, Consumer commodity'' entry is closely tied to the ICAO Technical Instructions and air transportation.

First, PHMSA is making editorial revisions to the title of the section and introductory language in paragraph (a). PHMSA is renaming the section ''ID8000 Consumer commodity'' to distinguish this section from the historical ''ORM–D, Consumer commodity'' HMT entry and an exception that ceased to be effective on December 31, 2020. PHMSA purposely phased out the ''ORM–D, Consumer commodity'' classification and description to remove the dual system of shipping certain limited quantities domestically and internationally, as it was a source of confusion.

PHMSA acknowledges that there may be circumstances where persons need to transport ID8000 packages between locations—*e.g.,* to a warehouse for consolidation, etc.—without needing or using air transportation. Therefore, PHMSA recognizes the need to not only accommodate that portion of transport but also provide assurances that any ID8000 package is appropriately prepared for air transportation, regardless of whether air transportation is actually used. PHMSA is clarifying that ID8000 material is inherently a limited quantity by adding the phrase ''limited quantity'' to the § 173.167(a) introductory text. Finally, PHMSA is removing the phrase ''when offered for transportation by aircraft'' from the introductory language in paragraph (a) and restructuring the existing first sentence of the section into two separate statements. This revision is intended to clarify that the materials and quantities listed in this section may be transported by all modes, and to clarify that only the materials listed in paragraph (a) are eligible to be transported as ''ID8000, Consumer commodity.''

More significantly, PHMSA is revising the structure of the section by moving the two requirements in the currently effective language of paragraph (b)—applicable only to air transportation—to new subparagraphs (6) and (7) of paragraph (a). This will require all ID8000 packages to be subject to the limited quantity marking requirements of § 172.315(b) (*i.e.,* require use of the ''Y'' limited quantity marking) and other markings required by part 172 subpart D, including marking of the ID number and PSN. This revision will also require compliance with the § 173.27(c) pressure differential requirement for transportation by all modes. The intent of this revision is two-fold:

1. Provide clarity to shippers on the hazard communication and pressure differential requirements for all shipments of ''ID8000, Consumer commodity'' packages.

2. Ensure that ''ID8000, Consumer commodity'' packages—wherever they are in the transportation stream—meet the requirements for air transportation.

However, while required in paragraph (a), PHMSA is adding a new paragraph (b) to provide exceptions to ID8000 packages for shipping papers and labels when transported by highway and rail. These exceptions were previously in the introductory language to paragraph (a). PHMSA is also providing a new labeling exception for ID8000 packages transported by vessel, which aligns with the labeling exception provided to limited quantity packages transported by vessel. PHMSA reminds shippers that packages shipped under this section are still subject to the marking requirement (*i.e.,* require the limited quantity marking). PHMSA received comments from COSTHA and the MDTC in support of this revision.

In addition to the revisions to § 173.167 requested in P–1762 discussed above, COSTHA submitted petition P–1761 [27] with additional requests. Specifically, in P–1761, COSTHA requested that PHMSA add a reference to § 173.167 in the sections that outline limited quantity exceptions for Class 3, PG II and III (§ 173.150), UN3175 (§ 173.151), Division 6.1 PG III (§ 173.153), UN3077, UN3082, UN3334 and UN3335 (§ 173.155), and Class 2 non-toxic aerosols (§ 173.306). PHMSA did not propose these revisions in the NPRM. PHMSA received comments from COSTHA reiterating their petition that PHMSA modify the limited quantity sections listed above to reference § 173.167. PHMSA asserts that ID8000 is a specialized exception, designed only for a small subset of materials, and the materials are subject to stringent packaging requirements. PHMSA reiterates that adding a reference to § 173.167 to the limited quantity exception sections listed above will create confusion for shippers by referencing an exception that most may not be able to adequately meet. All the materials and quantities authorized in § 173.167 may be transported as limited quantities by all modes. For the vast majority of hazardous material shippers who offer these materials in these small quantities, utilizing the limited quantity exception specific to the commodity (*e.g.,* not utilizing § 173.167) is the most appropriate and simplest option.

[24] 76 FR 3307 (Jan. 19, 2011).

[25] Ref. No. 11–0090 (May 3. 2012); Ref. No. 16–0075 (Jan. 9, 2016).

[26] *https://www.regulations.gov/document/PHMSA-2022-0007-0001.*

[27] *https://www.regulations.gov/document/PHMSA-2022-0006-0001.*

PHMSA reiterates that if shippers, carriers, or other entities involved in the transportation of hazardous materials are uncertain what marking requirements apply to a limited quantity shipment, it could mean that their training programs are inadequate and may need to be reviewed.

Section 173.185

Section 173.185 prescribes requirements for the transportation of lithium cells and batteries. PHMSA is making numerous changes to this section as follows.

Paragraph (a) classification revisions: Paragraph (a) provides general classification provisions, which include requirements for manufacturers and subsequent distributers of lithium cells and batteries to provide others in the supply chain a test summary of the battery, which contains information regarding the cells and batteries. PHMSA received a comment from PRBA and MDTC noting that a small, but important amendment to the UN38.3 Test Summary is included in the UN Manual of Tests and Criteria, Seventh Revised Edition, Amendment 1, which was adopted in December 2020. PRBA notes that this amendment was based on a proposal filed with the UN Sub-Committee of Experts on the Transport of Dangerous Goods by PRBA and their counterpart in Europe. The amendment removes the signature requirement in the test summary document, which is currently found in § 173.185(a)(3)(x). This provision currently states: ''Signature with name and title of signatory as an indication of the validity of information provided.''

PRBA notes that PHMSA proposed to incorporate by reference in § 171.7 the UN Manual of Tests and Criteria, Seventh Revised Edition, Amendment 1, but did not include this proposed change to the Test Summary document in § 173.185 of the HMR. In its comments, PRBA and MDTC requested that PHMSA amend § 173.185(a)(3)(x) to make it clear that a signature is not required on the test summary document. PHMSA concurs with the MDTC and PRBA comments that the revision was inadvertently left out of the NPRM, and as such PHMSA is revising § 173.185(a)(3)(x) to require the test summary indicate the name and title of a responsible person. A signature would no longer be required.

Additionally, PHMSA is amending paragraph (a)(3) to except button cell batteries installed in equipment (including circuit boards) from these test summary requirements. This amendment will give shippers of traditionally less regulated products, such as wrist watches and key fobs, an exception from the need to maintain a test summary document.

PHMSA received a comment from ALPA opposing the amendment to except button cells installed in equipment from the test summary document requirement. ALPA stated in its comments that experimental data was presented at the ICAO DGP working group showing that button cells installed in electronic devices initiated fires when short circuiting. PHMSA appreciates ALPA's perspective on this issue; however, button cell batteries have inherent limitations on their energy capacity and content. This self-limiting design helps mitigate potential risks if the batteries are misused or damaged. PHMSA asserts that the HMR appropriately addresses the hazards associated with these types of batteries. PHMSA also notes that this revision in no way relieves button cells from the design testing requirements; it merely excepts the button cells from the requirement to create and distribute a test summary document. Additionally, COSTHA, DGAC, MDTC, and PRBA all provided comments in support of this proposal as written. Therefore, PHMSA finds that this amendment maintains the safety standard for the transportation of lithium batteries consistent with the exceptions for smaller cells or batteries found in §§ 173.185(c)(2) and (c)(3) as currently button cell batteries are excepted from the packing requirement to use a strong, rigid outer package, provided the battery is sufficiently protected by the equipment in which it is contained, and the lithium battery marking requirements, respectively. Further, PHMSA is making an editorial amendment by deleting the onset date in paragraph (a)(3) as January 1, 2022, has passed, and the paragraph now applies generally.

Additionally, PHMSA is adding a new paragraph (a)(5) to require marking the outer casing of lithium ion batteries with the Watt-hour (Wh) rating. This is consistent with the provisions for smaller lithium ion batteries in § 173.185(c)(1)(i), which require that ''each lithium ion battery subject to this provision must be marked with the Watt-hour rating on the outside case.'' PHMSA added this provision to the HMR in HM–224F.[28] While the requirement was added to the HMR for smaller lithium ion batteries (as a condition for use of an exception), no similar provision was added for other lithium ion batteries (*i.e.,* those not offered in accordance with, or eligible for, the paragraph (c) exceptions). However, upon review, PHMSA noted that the international regulations generally require the marking of the Wh rating on the outside of the casing. Specifically, this is required in accordance with Special Provision 348 of the UN Model Regulations; Special Provision 188 of the IMDG Code; Section IA.2 of Packing Instruction 965 (for UN3480); and Section I.2 of Packing Instruction 966 (for UN3481) and 967 (for UN3481) of the ICAO Technical Instructions. PHMSA expects that this amendment will improve safety, as the marking of the Wh rating on the outer casing of a lithium ion battery assists a shipper in better understanding the energy capacity of the battery, and thus, ensures compliance with hazard communication and packing provisions associated with Wh limitations.

MDTC and PRBA provided comments noting that the UN Model Regulations, ICAO Technical Instructions, and IMDG Code are clear that the Wh rating is only required on lithium-ion batteries and not lithium-ion cells, which PHMSA originally proposed. MDTC and PRBA conclude that it would be impractical to require the Wh marking on very small cells like those used in medical devices and small consumer devices (*e.g.,* smart glasses and ear buds). PRBA and MDTC request confirmation from PHMSA that it was not the Agency's intent to require the marking on lithium ion cells. PHMSA concurs with the commenters and is not adding lithium ion cells to the requirement in paragraph (a)(5). PHMSA is clarifying in the final rule that the requirement to mark the Wh rating only applies to lithium ion batteries and not lithium ion cells. PHMSA also received a comment from COSTHA in support of this revision.

Paragraph (b) packaging revisions: Section 173.185(b)(3) contains packaging provisions for lithium cells or batteries packed with equipment. Paragraph (b)(3)(iii) provides two authorized packaging configurations for lithium cells and batteries packed with equipment. Specifically, it permits lithium cells and batteries, when packed with equipment, to be placed in: (1) inner packagings that completely enclose the cell or battery, then placed in an outer packaging; or (2) inner packagings that completely enclose the cell or battery, then placed with equipment in a package that meets the PG II performance requirements as specified in paragraph § 173.185(b)(3)(ii). The intent of the first option provided in paragraph (b)(3)(iii)(A) is to permit packing only the cells or batteries in a UN specification packaging, and then place this packaging with the equipment, for

[28] 79 FR 46011 (Aug. 6, 2014).

which the batteries are intended, in a non-UN specification outer packaging. The intent for the second option provided in paragraph (b)(3)(iii)(B) is to pack both the cells or batteries and the equipment in a UN specification outer packaging. In a working paper submitted at the ICAO 2020 Working Group Meeting, it was noted that the actual text for the two options was not clear. Specifically, paragraph (b)(3)(iii)(A) does not clearly state that the specification packaging containing the cells or batteries is then packed with the equipment into a non-specification outer packaging. Consistent with the clarifying revision in the ICAO Technical Instructions, and to align more closely with the text in packing instruction P903 of the UN Model Regulations, PHMSA is revising paragraph (b)(3)(iii)(A) by clearly indicating that the cells or batteries must be placed in a specification package of a type that meets PG II performance requirements and then placed together with the equipment in a strong, rigid outer non-specification packaging. For additional clarity, PHMSA also is revising paragraph (b)(3)(iii)(B) by replacing the text ''package'' with the phrase ''packaging of a type'' when referring to the specification package meeting the PG II performance requirements. PHMSA received a comment from COSTHA in support of this revision.

PHMSA is adding a new paragraph (b)(3)(iii)(C) to include a limitation for the number of cells or batteries in the package, when transported by air. This is consistent with the provisions for smaller cells or batteries found in § 173.185(c)(4)(i)—as revised in this final rule—which currently requires that for smaller cells or batteries contained in or packed with equipment and shipped by aircraft, the number allowed in each package is limited to the number required to power the piece of equipment, plus two spare sets. The original provision limiting the number in each packaging was added in HM–224F but did not apply to fully regulated shipments.

However, PHMSA notes that the limitation on the number of cells or batteries allowed in a package should have also applied to fully regulated shipments of lithium batteries packed with equipment, consistent with Section I.2 of Packing Instruction 966 (for UN3481) and Packing Instruction 969 (for UN3091) of the ICAO Technical Instructions. PHMSA did not intend to limit the scope of this requirement to just smaller cells or batteries, as a condition for the exception from full regulation under paragraph (c), as this packaging requirement is intended to limit the hazard of lithium battery shipments in air transportation. Limiting the number of cells and batteries allowed to be packaged with equipment reduces hazard risks and increases safety.

Section 173.185(b)(4) contains packaging provisions for lithium cells or batteries contained in equipment. Consistent with the ICAO Technical Instructions, PHMSA is adding a new paragraph (b)(4)(iv) clarifying that for transportation by aircraft, when multiple pieces of equipment are packed in the same outer packaging, each piece of equipment must be packed to prevent contact with other equipment. This change is necessary because existing provisions in paragraph (b) could be interpreted to only apply to an outer packaging containing a single piece of equipment; however, an outer packaging may contain multiple pieces of equipment. This provision will more clearly communicate that for multiple pieces of equipment containing lithium cells or batteries in the same outer packaging, the equipment must be packed to prevent damage due to contact between the pieces of equipment. PHMSA received comments from ALPA, PRBA, COSTHA, and MDBTC in support of this revision.

Paragraph (c) exceptions for smaller cells or batteries revisions: Section 173.185(c) provides exceptions for smaller cells or batteries. Paragraph (c)(3) specifies requirements for the lithium battery mark. In the NPRM, PHMSA proposed to remove the telephone number requirement from the lithium battery mark with a phaseout date of December 31, 2026.

The intended use of the telephone number and its effectiveness was discussed by the UNSCOE. Examples pointing to its ineffectiveness include differences in time zones and languages between the origin and destination of a shipment or intermediate transport point, and a lack of clarity on the expected capability of the person responding to a telephone call. The requirement to include a ''telephone number for additional information'' was originally introduced in the 15th revised edition of the UN Model Regulations. It was envisioned that the telephone number would be for the consignor or other responsible individual who could provide further information (*e.g.,* appropriate corrective actions should something be wrong with the package) beyond the minimal information required to be indicated on the package. At that time, there was minimal hazard communication and less awareness than is currently provided for in the UN Model Regulations. The consignor information can now be readily obtained through other means, such as a bill of lading, shipping labels, or other paperwork, thereby rendering the telephone number requirement as a piece of information on the lithium battery mark effectively redundant. The resulting consensus based on both the discussion and experience with transport of small lithium batteries was that the telephone number adds little value, and removing the telephone number requirement from the mark would not reduce the effectiveness of the mark and therefore, not impact safety of transportation. PHMSA received an anonymous comment stating that the transition period authorizing continued use of the current lithium battery mark should extend beyond December 31, 2026. The commenter stated this transition period was decided on the premise that the international harmonization final rule would be published before January 1, 2023. As such, the anonymous commenter suggested that the phaseout date for the lithium battery mark in § 173.185(c)(3) should be extended based on the publication date of the final rule. PHMSA disagrees with the commenter that an extension is needed for the phaseout of the revised lithium battery mark in § 173.185(c)(3). The phaseout date of December 31, 2026, for the old lithium battery mark should still provide adequate time for entities to comply with the revised marking and does not justify PHMSA not being harmonized with the international regulations on this subject. Additionally, PHMSA received a comment from COSTHA in support of keeping the transition time the same as the international regulatory texts to facilitate global harmonization for this transition. Therefore, PHMSA is revising the lithium battery mark by removing the double asterisk from the example figure and the corresponding requirement in paragraph (c)(3)(i)(C) to replace the double asterisk with the telephone number. PHMSA is setting a transition period authorizing the use of the current lithium battery mark until December 31, 2026. ALPA, PRBA, and COSTHA provided comments in support of this revision.

Paragraph (c)(4) contains provisions for exceptions for smaller lithium cells and batteries offered by air transportation. PHMSA is removing the exceptions applicable to small lithium cells and batteries when they are not packed with or contained in equipment. This change was also implemented on

January 1, 2022, by the International Air Transport Association (IATA), and authorization for the exceptions for smaller lithium cells and batteries were removed from Packing Instructions 965 and 968 in the 2023–2024 Edition of the ICAO Technical Instructions. The exceptions in § 173.185(c)(4) were originally developed to facilitate the global transport of small lithium cells and batteries. However, these exceptions removed many of the regulatory safeguards that provide for the safe transport of lithium batteries, including requirements for air operators to perform an acceptance check; information to be provided to the pilot-in-command; and package hazard communication. Furthermore, the exceptions for small lithium cells and batteries limit the ability of air operators to conduct the necessary safety risk assessments. The reduced hazard communication also increased the risk of small lithium cells and battery packages restricted for transport on cargo-only aircraft from being inadvertently loaded on a passenger aircraft. The removal of these exceptions increases the visibility of these shipments to operators who must perform an acceptance check to ensure proper packaging and hazard communication and ensure the information regarding the number and location of packages containing lithium batteries will be provided to the pilot-in-command. The changes do not apply to the exceptions for small lithium cells and batteries packed with or contained in equipment. Specifically, PHMSA is removing the following provisions:

- Paragraph (c)(4)(i) including Table 1, which specifies the number and net quantity of lithium batteries.
- Paragraph (c)(4)(ii), which specifies the limitation of one package per overpack.
- Paragraph (c)(4)(iii), which specifies the limitation of one package per consignment.
- Paragraph (c)(4)(v), which specifies that offering packages and overpacks to an operator must be done separately from cargo not subject to the HMR.
- Paragraph (c)(4)(viii), which limits packing cells and batteries with certain types of hazardous materials in the same package or overpack.

As a consequence, the remaining provisions in paragraph (c)(4) applicable to lithium cells or batteries packed with, or contained in, equipment will be reorganized and renumbered. The paragraph (c)(4) introductory text is revised to read, ''Air transportation for smaller lithium cell or batteries packed with, or contained in, equipment.'' Further, consistent with the ICAO Technical Instructions, paragraph (c)(4)(ii), is revised to require that when placed into an overpack, packages must be secured within the overpack, and the intended function of each package must not be impaired by the overpack. The general provisions for overpacks in Part 5, 1.1 of the ICAO Technical Instructions require that packages must be secured within the overpack, and that the intended function of the package must not be impaired by the overpack. However, with the current construction of the provisions for small cells or batteries in Packing Instructions 966, 967, 969, and 970, the general Part 5 overpack provisions do not apply, which could lead to packages being unsecured or even damaged by being unrestrained within an overpack. These overpack provisions from Part 5 were added to the respective packing instructions to ensure protection against damage of the packages and their contents; therefore, PHMSA is harmonizing this change in § 173.185(c)(4)(ii).

These amendments (*i.e.,* hazard communication clarifications and revisions to lithium battery requirements for consistency) maintain the level of safety currently present in the HMR's high safety standard. Safety benefits will also be derived from improved compliance related to consistency amongst domestic and international regulations. PHMSA received a comment from MDTC in support of this revision.

Section 173.185(c)(5), which corresponds to Packaging Instructions 965 and 968 in Section IB of the ICAO Technical Instructions, provides an exception from specification packing requirements for smaller lithium cells and batteries, not exceeding the size prescribed in paragraph (c)(1) and subject to certain quantity limits. PHMSA is revising the paragraph (c)(5) introductory text to, ''Air transportation for smaller lithium cell and batteries.'' Combined with the revision to the (c)(4) introductory text, this will assist users of this section to understand that the requirements in this section apply to smaller lithium cells and batteries transported by air. PHMSA is also removing the references to paragraph (c)(4) limitations based on their removal, as described above. Additionally, PHMSA is moving the regulatory requirements of paragraph (c)(5) to a new paragraph (c)(5)(i), based on the addition of new paragraph (c)(5)(ii). As mentioned, PHMSA is adding a new paragraph (c)(5)(ii) to require packages to be capable of withstanding a three-meter stack test for a duration of 24 hours. Because lithium cells and batteries offered in accordance with paragraph (c)(5) are excepted from the specification package requirements, they are not presently subject to a stack test. However, the general requirements for limited quantity packages by air in § 173.27(f)(2)(vi), which are also excepted from specification packaging requirements, requires that each package be capable of withstanding a three-meter stack test for a duration of 24 hours. In considering the packaging standards between limited quantity packages and those for smaller lithium cells and batteries, it was agreed by the DGP that packages must be capable of withstanding a stack test, in parallel with the requirement for limited quantity packages. PHMSA agrees with introducing a stack test as a preventative safety measure against potential damage to lithium battery packages from stacking of packages and is including a stack test requirement in new paragraph (c)(5)(ii). PHMSA received comments in response to the NPRM from PRBA, COSTHA, and DGAC in support of this revision.

Lastly, consistent with corresponding revisions to international standards, PHMSA is making editorial revisions in paragraphs (e)(6) and (e)(7), where references to ''battery assemblies'' are removed and replaced with the phrase ''cells and batteries,'' as used throughout the section. Paragraph (a)(1) requires each lithium cell or battery to be of the type proven to meet the criteria in part III, sub-section 38.3, of the UN Manual of Tests and Criteria. The 38.3.2.3 definition for ''battery'' states that:

> ''. . . Units that are commonly referred to as ''battery packs,'' ''modules'' or ''battery assemblies'' having the primary function of providing a source of power to another piece of equipment are, for the purposes of the Model Regulations and this Manual, treated as batteries.''

Use of ''battery assemblies'' may be a source of confusion, as the reader may understand it to have a separate meaning from ''battery,'' yet it is not specifically defined in the HMR. Further, based on the above requirements to comply with the UN Manual of Tests and Criteria and its associated meaning of ''battery assemblies,'' PHMSA considers that the use of the term ''battery assemblies'' is redundant with the term ''battery'' in the context of these transport requirements, and is revising the text to reduce confusion of the provisions in these paragraphs regarding applicability to the assembly or to the cells and batteries contained within an assembly. PHMSA expects that the changes to

§ 173.185 will provide clarity, thus enhancing the safety standard in the HMR for transportation of lithium batteries. PHMSA received comments in response to the NPRM from MDTC and COSTHA in support of this revision.

Section 173.224

Section 173.224 establishes packaging, and control and emergency temperatures for self-reactive materials. The Self-Reactive Materials Table in paragraph (b) of this section specifies requirements for self-reactive materials authorized for transportation that do not require prior approval for transportation by the Associate Administrator for Hazardous Materials Safety. As a result of new self-reactive materials formulations becoming commercially available, the 22nd revised edition of the UN Model Regulations includes updates to the list of specified self-reactive materials authorized for transportation without prior approval. To maintain consistency with the UN Model Regulations, PHMSA is updating the Self-Reactive Materials Table by adding a new entry for ''(7-Methoxy-5-methyl-benzothiophen-2-yl) boronic acid.'' PHMSA also is correcting the name of one of the listed self-reactive substances on the self-reactive substances table. Currently, ''2-(N,N-Methylaminoethylcarbonyl)-4-(3,4-dimethyl-phenylsulphonyl)benzene diazonium zinc chloride'' is listed; however, this formulation name should be ''2-(N,N-Methylaminoethylcarbonyl)-4-(3,4-dimethylphenylsulphonyl) benzenediazonium hydrogen sulphate.'' While reviewing the self-reactive table in the UN Model Regulations and ICAO Technical Instructions, PHMSA discovered that ''2-(N,N-Methylaminoethylcarbonyl)-4-(3,4-dimethyl-phenylsulphonyl)benzene diazonium zinc chloride'' does not appear in any other international regulations but that ''2-(N,N-Methylaminoethylcarbonyl)-4-(3,4-dimethylphenylsulphonyl) benzenediazonium hydrogen sulphate'' does and includes identical packaging provisions. PHMSA does not believe there is any formulation called ''2-(N,N-Methylaminoethylcarbonyl)-4-(3,4-dimethyl-phenylsulphonyl)benzene diazonium zinc chloride'' that exists, and that this entry as it appears is the result of an editorial error in which two individual formulation names were inadvertently combined. Therefore, PHMSA is correcting the name associated with this formulation by removing the suffix ''benzene diazonium zinc chloride'' and replacing it with ''benzenediazonium hydrogen sulphate.''

In addition, PHMSA is assigning a new ''Note 6'' to this entry among the list of notes following the table. ''Note 6'' will provide concentration limits of water and organic impurities for this new self-reactive material. PHMSA expects that adding provisions for the transport of (7-Methoxy-5-methyl-benzothiophen-2-yl) boronic acid formulations will facilitate its transport while maintaining the HMR's safe standard for transportation of self-reactive hazardous materials.

PHMSA is also revising § 173.224(b)(4). In a previous final rule, HM–215O, PHMSA revised § 173.224 to authorize self-reactive materials to be transported and packed in accordance with packing method OP8 where transport in IBCs or portable tanks is permitted in accordance with § 173.225, provided that the control and emergency temperatures specified in the instructions are complied with. This change allowed materials that are authorized in bulk packagings to also be transported in appropriate non-bulk packagings. PHMSA is making an editorial correction to a reference to the formulations listed in § 173.225. In the course of adding this provision, PHMSA incorrectly directed users to the Organic Peroxide IBC Table by referencing 173.225(f); however, the table is found in 173.225(e). Therefore, PHMSA is correcting that sentence to refer to 173.225(e).

Section 173.225

Section 173.225 prescribes packaging requirements and other provisions for organic peroxides. As a result of new peroxide formulations becoming commercially available, the 22nd revised edition of the UN Model Regulations includes updates to the list of identified organic peroxides, which provides for formulations of these materials that are authorized for transportation without prior approval. To maintain consistency with the UN Model Regulations, PHMSA is updating the Organic Peroxide Table in § 173.225(c) by adding new entries for ''tert-Butylperoxy isopropylcarbonate,'' ''tert-hexyl peroxypivalate,'' and ''acetyl acetone peroxide,'' and identifying them as ''UN3105, Organic peroxide type D, liquid;'' ''UN3117, Organic peroxide type E, liquid, temperature controlled;'' and ''UN3107, Organic peroxide type E, liquid,'' respectively. Additionally, PHMSA is adding a ''Note 32'' following the table, in association with the new entry for ''acetyl acetone peroxide,'' to indicate that the active oxygen concentration for this formulation is limited to concentrations of 4.15% active oxygen or less. PHMSA also is revising the Organic Peroxide Portable Tank Table in paragraph (g) to maintain alignment with the 22nd revised edition of UN Model Regulations by adding the new formulation ''tert-Butyl hydroperoxide, not more than 56% with diluent type B,'' identified by ''UN3109, Organic peroxide type F, liquid.'' This amendment will also include the addition of ''Note 2'' following the table to specify that diluent type B is tert-Butyl alcohol. PHMSA expects that adding provisions for the transport of these newly available peroxide formulations will facilitate transportation of these materials, while maintaining the HMR's safety standard for transportation of organic peroxide hazardous materials.

Section 173.232

Section 173.232 outlines the packaging requirements for articles containing hazardous materials. For the purposes of this section, an ''article'' means machinery, apparatus, or other device that contains one or more hazardous materials—or residues thereof—that are an integral element of the article, are necessary for its functioning, and cannot be removed for the purpose of transport. Currently, these articles are forbidden from transport on passenger and cargo-only aircraft, as specified in column (9) of the HMT. However, the 2023–2024 ICAO Technical Instructions include new provisions permitting the transport of certain articles containing hazardous materials aboard passenger and cargo-only aircraft. These new provisions allow articles described and classified as ''UN3548, Articles containing miscellaneous dangerous goods, n.o.s., 9'' or ''UN 3538, Articles containing non-flammable, non-toxic gas, n.o.s., 2.2'' to be transported by cargo-only and passenger aircraft under certain conditions. PHMSA is making changes consistent with those provisions by adding two new packaging provisions in § 173.232, in addition to the new special provisions A224 and A225 discussed above in Section-by-Section Review of amendments for § 172.102. Specifically, PHMSA is specifying in paragraph (h) that air transport is permitted for UN3548 when the articles: (1) do not have an existing proper shipping name; (2) contain only environmentally hazardous substances exceeding 5 L or 5 kg; and (3) all other conditions of § 173.232 are met. In a new paragraph (h)(ii), the same requirements are added for articles transported under UN3538, which: (1) do not have an existing proper shipping name; (2) contain only

gases of Division 2.2 without a subsidiary hazard, except for refrigerated liquefied gases and other gases that are forbidden for transport on passenger aircraft, where the quantity of the Division 2.2 gas exceeds the quantity limits for UN 3363, as prescribed in § 173.222; (3) the quantity of gas in the article does not exceed 75 kg when transported by passenger aircraft or 150 kg when transported by cargo-only aircraft; and (4) gas containing receptacles within the article must meet the requirements of Part 173 and Part 175, as appropriate., or meet a national or regionally recognized pressure receptacle standard.

Additionally, both packaging provisions also permit the transport of these articles, containing lithium cells or batteries, provided that the batteries meet the requirements specified in § 173.185(c). The aim of these new provisions is to facilitate the transport of large articles containing environmentally hazardous substances, such as aircraft landing gear struts filled with hydraulic fluid, and large articles containing a non-flammable, non-toxic gas, such as new types of magnetic resonance imaging (MRI) scanners, which often contain compressed helium, as well as lithium cells or batteries. As a participant on the DGP, PHMSA expects that the packaging provisions provide an appropriate level of safety to allow these items to be transported by air and are appropriate for incorporation in the HMR.

Section 173.301b

Section 173.301b outlines additional general requirements when shipping gases in UN pressure receptacles (*e.g.,* cylinders). The 22nd revised edition of the UN Model Regulations updated references of several authorized standards for ensuring proper valve protection. In order to maintain the current safety standard of the HMR for valve protection and harmonization with the requirements for UN pressure receptacles, PHMSA is also updating these references. Currently, paragraph (c)(1) requires that quick release cylinder valves for specification and type testing must conform to the requirements in ISO 17871:2015(E), ''Gas cylinders—Quick-release cylinder valves—Specification and type testing.'' ISO 17871, in conjunction with ISO 10297 and ISO 14246, specifies design, type testing, marking, manufacturing tests, and examination requirements for quick-release cylinder valves, intended to be fitted to refillable transportable gas cylinders and pressure drums, and tubes used to transport compressed or liquefied gases or extinguishing agents charged with compressed gases to be used for fire-extinguishing, explosion protection, and rescue applications. As part of its regular review of its standards, ISO updated and published the second edition of ISO 17871 as ISO 17871:2020(E). PHMSA is revising the valve requirements in this paragraph to require quick release cylinder valves for specification and type testing to conform to ISO 17871:2020(E). After December 31, 2026, conformance with ISO 17871:2015(E) will no longer be authorized in the UN Model Regulations; therefore, for consistency, PHMSA is adding a phaseout date of December 31, 2026, for continued conformance with ISO 17871:2015(E). PHMSA clarified in the ''Section IV: Comment Discussion'' section of this final rule that the phaseout date of December 31, 2026, applies to the manufacturing of valves under ISO 17871:2015(E). Valves manufactured before December 31, 2026, would still be authorized under the HMR. The second edition of this standard broadens the scope to include quick release valves for pressure drums and tubes, and specifically excludes the use of quick-release valves with flammable gases. Other notable changes include the addition of the valve burst test pressure; the deletion of the flame impingement test; and the deletion of the internal leak tightness test at −40 °C for quick-release cylinder valves, used only for fixed firefighting systems installed in buildings. PHMSA expects that updating the requirements for conformance of UN pressure receptacles with this document will maintain the HMR safety standard for these packagings, and facilitate compliance with valve requirements domestically and internationally by aligning the HMR with changes adopted in the 22nd revised edition of the UN Model Regulations. PHMSA reviewed this edition as part of its regular participation in the review of amendments for the UN Model Regulations.

PHMSA also is revising paragraph (c)(2), which requires UN pressure receptacles to have their valves protected from damage to prevent unintentional release of the contents of the receptacles. Various methods on how to achieve damage protection are provided, including equipping the container with a valve cap or guard that conforms to ISO 11117:2008, ''Gas cylinders—Valve protection caps and guards—Design, construction and tests'' and the Technical Corrigendum 1, a complementary document to the standard. As part of its regular review of its existing standards, in 2019, ISO published an updated version of this standard, 11117:2019, which was adopted in the 22nd revised edition of the UN Model Regulations as a permitted conformance standard for valve protection. This document updates the 2008 version, currently authorized in paragraphs (c)(2)(ii) and (c)(2)(iii). In accordance with the UN Model Regulations, PHMSA also is authorizing the continued use of ISO 11117:2008, in conjunction with the Technical Corrigendum, until December 31, 2026. PHMSA clarified in the ''Section IV: Comment Discussion'' section of this final rule that the phaseout date of December 31, 2026, applies to the manufacturing of valve protection caps under ISO 11117:2008. Valves manufactured before December 31, 2026, would still be authorized under the HMR. Similarly, for metal hydride storage systems, damage protection of the valve must be provided in accordance with ISO 16111:2008, ''Transportable gas storage devices—Hydrogen absorbed in reversible metal hydride.'' As part of its regular review of its existing standards, in 2018, ISO published an updated version of this standard, which was adopted in the 22nd revised edition of the UN Model Regulations as a permitted conformance standard for valve protection. Therefore, to maintain alignment with the UN Model Regulations' requirements for UN metal hydride storage systems, PHMSA is updating the required standard for protection of valves to ISO 16111:2018 and including a phaseout date of December 31, 2026, for continued use of valve guards conforming to valve protection standards in ISO 16111:2008. PHMSA clarified in the ''Section IV: Comment Discussion'' section of this final rule that the phaseout date of December 31, 2026, applies to the manufacturing of valves under ISO 16111:2008. Valves manufactured before December 31, 2026, would still be authorized under the HMR. PHMSA has reviewed the updated ISO standards as part of its regular participation in the review of amendments for the UN Model Regulations and has determined use of the update ISO 16111 will maintain the HMR safety standard for protection of valves used in UN metal hydride storage systems.

Paragraph (d) requires that when the use of a valve is prescribed, the valve must conform to the requirements in ISO 11118:2015(E), ''*Gas cylinders—Non-refillable metallic gas cylinders—Specification and test methods.*'' ISO 11118:2015 specifies minimum requirements for the material, design,

inspections, construction and workmanship, manufacturing processes, and tests at manufacture of non-refillable metallic gas cylinders of welded, brazed, or seamless construction for compressed and liquefied gases, including the requirements for their non-refillable sealing devices and their methods of testing. For consistency with the UN Model Regulations, PHMSA is revising the valve conformance requirements to include a reference to the 2019 amendment of ISO 11118, specifically, ISO 11118:2015/Amd 1:2019, which ISO published as a supplement to ISO 11118:2015(E). This supplement corrects the references and numerous typographical errors. The amendment also includes updates to the marking requirements in the normative Annex A, which includes clarifications, corrections, and new testing requirements. Additionally, paragraph (d) currently indicates that the manufacture of valves to ISO 13340:2001(E) is authorized until December 31, 2020. Since this date has passed, PHMSA is removing reference to this expired authorization.

Updating references to these documents will align the HMR with changes adopted in the 22nd revised edition of the UN Model Regulations pertaining to the design and construction of UN pressure drums. PHMSA has reviewed this edition as part of its regular participation in the review of amendments for the UN Model Regulations and does not expect any degradation of safety standards in association with its use.

Lastly, paragraph (f) of this section requires that for the transportation of hydrogen bearing gases, a steel UN pressure receptacle bearing an ''H'' mark must be used. The ''H'' marking indicates that the receptacle is compatible with hydrogen embrittling gases. However, some hydrogen bearing gases may also be transported in composite pressure receptacles with steel liners as provided in § 173.311. Therefore, PHMSA is amending § 173.301b(f) to clarify that these compatibility provisions apply to steel UN cylinders as well as composite pressure receptacles that include steel liners. PHMSA expects that this amendment will add an additional level of safety by ensuring that suitability of materials is considered when shippers opt to use composite cylinders for the transport of hydrogen bearing gases.

Section 173.302b

In the NPRM, PHMSA proposed to add a new Special Provision 441, assigning it to ''UN1045, Fluorine, compressed.'' As previously discussed in ''Section IV: Comment Discussion'' section of this final rule, PHMSA is moving the regulatory language from the proposed special provision 441 into § 173.302b(g). This new paragraph addresses gas mixtures containing fluorine and inert gases in UN pressure receptacles in accordance with changes adopted in the 22nd revised edition of the UN Model Regulations. Specifically, this change provides latitude with regard to the maximum allowable working pressure when fluorine is a part of a mixture, which contains less reactive gases, such as nitrogen, when the mixture is transported in UN pressure receptacles. As a strongly oxidizing gas, pure fluorine requires specific safety measures because it reacts spontaneously with many organic materials and metals. Additionally, because of its reactive properties, the UN Model Regulations limit the maximum allowable working pressure for pure fluorine in cylinders to 30 bar; a minimum test pressure of 200 bar is also required. However, prior to changes adopted in the 22nd revised edition of the UN Model Regulations, there was no guidance on the maximum allowable working pressure and minimum test pressure for mixtures of gases that contain fluorine. Commercially, these mixtures are often placed on the market and used in concentrations, which may include as little as one percent fluorine combined with noble gases, or 10 to 20 percent fluorine mixed with nitrogen. Due to the lack of specific provisions addressing fluorine gas mixtures, such mixtures containing relatively inconsequential amounts of fluorine were subject to the same requirements (restrictive maximum allowable working pressures) as pure fluorine. Given that fluorine, in a mixture with inert gases or nitrogen, is less reactive towards materials than pure fluorine, the UNSCOE determined that gas mixtures containing less than 35% fluorine by volume should no longer be treated like pure fluorine and may use a higher maximum allowable working pressure. The new packing provision added in the 22nd revised edition of the UN Model Regulations allows for pressure receptacles containing mixtures of fluorine and inert gases (including nitrogen) to have higher working pressures by allowing for consideration of the partial pressures exerted by the other constituents in the mixture, rather than limiting the pressure in the receptacle based on fluorine alone. Specifically, the provision permits mixtures of fluorine and nitrogen with a fluorine concentration below 35% by volume to be filled in pressure receptacles up to a maximum allowable working pressure for which the partial pressure of fluorine does not exceed 31 bar absolute. Additionally, for mixtures of true inert gases and fluorine, where the concentration of fluorine is below 35% by volume, pressure receptacles may be filled up to a maximum allowable working pressure for which the partial pressure of fluorine does not exceed 31 bar absolute, provided that when calculating the partial pressure, the coefficient of nitrogen equivalency is determined and accounted for in accordance with ISO 10156:2017. Finally, the newly added provision for these two types of gas mixtures limits the working pressure to 200 bar or less, and requires that the minimum test pressure of pressure receptacles for these mixtures equals 1.5 times the working pressure or 200 bar, with the greater value to be applied. While PHMSA is not adding similar provisions for this type of mixture in DOT specification cylinders in this rulemaking, PHMSA has evaluated the rationale and methods for determining the pressure limits in UN pressure receptacles, and finds that they provide an equivalent level of safety. For this reason, PHMSA is adopting the packing instruction as drafted in the UN Model Regulations as a new paragraph to § 173.302b of the HMR.

Section 173.302c

Section 173.302c outlines additional requirements for the shipment of adsorbed gases in UN pressure receptacles. Currently paragraph (k) requires that filling of UN pressure receptacles with adsorbed gases be performed in accordance with Annex A of ISO 11513:2011, ''*Gas cylinders—Refillable welded steel cylinders containing materials for sub-atmospheric gas packaging (excluding acetylene)—Design, construction, testing, use and periodic inspection.*'' As part of its periodic review and updates of standards, ISO has developed an updated second edition (published in 2019). The updated ISO 11513 standard was adopted in the 22nd revised edition of the UN Model Regulations for use in cylinders filled with adsorbed gases. Similarly, PHMSA is requiring use of Annex A of ISO 11513:2019. Specifically, this amendment will require the use of the 2019 standard and provide a phaseout date for continued use of the ISO 11513:2011 until December 31, 2024. Updating references to this document will align the HMR with changes adopted in the 22nd revised edition of the UN Model Regulations pertaining to the shipment

of adsorbed gases in UN pressure receptacles. PHMSA has reviewed this edition as part of its regular participation in the review of amendments for the UN Model Regulations and does not expect any degradation of safety standards in association with its use.

Section 173.311

Section 173.311 specifies requirements for transportable UN metal hydride storage systems (UN3468) that are comprised of pressure receptacles not exceeding 150 L (40 gallons) in water capacity, and having a maximum developed pressure not exceeding 25 MPa (145 psi). Currently, the HMR requires that these metal hydride storage systems be designed, constructed, initially inspected, and tested in accordance with ISO 16111:2008, ''Transportable gas storage devices—Hydrogen absorbed in reversible metal hydride.'' However, the 22nd revised edition of the UN Model Regulations updated references to this standard to authorize the use of the updated 2018 version of ISO 16111, while allowing the 2008 version to remain authorized for use until December 31, 2026. PHMSA clarified in the ''Section IV: Comment Discussion'' section of this final rule that the phaseout date of December 31, 2026, applies to the manufacturing of cylinders under ISO 16111:2008. Cylinders manufactured before December 31, 2026, would still be authorized under the HMR. Therefore, for consistency with the requirements for UN metal hydride storage systems, PHMSA is adopting changes made in the 22nd revised edition of the UN Model Regulations to authorize the use of ISO 16111:2018 and add a phaseout date of December 31, 2026, for continued use of ISO 16111:2008. PHMSA has reviewed this edition as part of its regular participation in the review of amendments for the UN Model Regulations and has determined the updated edition of ISO 16111 will maintain the HMR safety standards for the design, construction, initial inspection, and testing of UN metal hydride storage systems.

D. Part 175

Section 175.1

Section 175.1 outlines the purpose, scope, and applicability of the Part 175 requirements for the transport of hazardous materials by aircraft. Specifically, these requirements are in addition to other requirements contained in the HMR. The aircraft-level risk presented by hazardous materials depends on several factors, such as the total quantity and type, potential interactions, and existing risk mitigation measures. When accepting hazardous materials for transportation by aircraft, certain aircraft operators (*i.e.,* air carriers) must also comply with the Federal Aviation Administration (FAA) Safety Management System (SMS) requirements in 14 CFR part 5—Safety Management Systems, which impacts how operators comply with requirements of the HMR.

PHMSA is adding a new paragraph (e) to this sections that directs 14 CFR part 121 certificate holders to the FAA's requirements to have an SMS in accordance with 14 CFR part 5. This action will not introduce new regulatory burden, as the SMS requirements for Part 121 certificate holders have been in place for several years. However, PHMSA expects that adding a reference to these requirements in the HMR will provide additional clarity for Part 121 aircraft operators, particularly with SMS applicability to the acceptance and transport of hazardous materials at the aircraft level. Finally, PHMSA notes that the FAA Advisory Circular (AC) 120–121 [29] provides information relating to safety risk assessments (which is the process within the SMS composed of describing the system, identifying the hazards, and analyzing, assessing, and controlling risk) and potential mitigation strategies to items in the aircraft cargo compartment. When using this document, aircraft operators should refer to requisite ICAO documents; check the FAA website for additional information on cargo safety and mitigations relating to fire events; and consider safety enhancements developed and promoted by industry groups.

Section 175.10

Section 175.10 specifies the conditions under which passengers, crew members, or an air operator may carry hazardous materials aboard an aircraft. Consistent with revisions to the ICAO Technical Instructions, PHMSA is making revisions in paragraphs (a)(15) and (a)(17) applicable to the carriage of wheelchairs or other mobility aids powered by batteries. Specifically, in paragraphs (a)(15)(v)(A), (a)(15)(vi)(A) and (a)(17)(ii)(C), which currently require that the battery be securely attached to the wheelchair or mobility aid, PHMSA is adding the supplemental requirement that the battery is also adequately protected against damage by the design of the wheelchair or mobility aid. The revisions will enhance the safe carriage of these battery-powered items aboard passenger aircraft by requiring combined measures of protection against damage and securement of the batteries. Furthermore, the revisions will assist passengers traveling with battery-powered wheelchairs or mobility aids by providing better clarity on the required safety measures. Additionally, PHMSA is revising introductory text to paragraphs (a)(14) and (a)(26) to specifically state that each lithium battery must be of a type that meets the requirements of the UN Manual of Tests and Criteria, Part III, Subsection 38.3. Currently this requirement is outlined in every other subparagraph under paragraph (a) pertaining to lithium batteries but was inadvertently omitted in prior rulemakings for paragraphs (a)(14) and (a)(26). In its comment to the NPRM, COSTHA notes that PHMSA inadvertently left out the word ''lithium'' to clarify the testing requirements in this section apply to lithium batteries. PHMSA concurs with the COSTHA comment and is revising § 175.10(a)(14) to clarify that the testing requirements in this section only apply to lithium powered batteries. Additionally, PHMSA received comments from ALPA, MDTC, and PRBA in support of this proposal. Therefore, for clarity and consistency with the ICAO Technical Instructions, PHMSA is making this editorial change and expects it will improve safety by ensuring it is understood that all lithium batteries transported under the provisions of that paragraph are subject to UN testing.

PHMSA is revising paragraph (a)(18) regarding the carriage of portable electronic devices (*e.g.,* watches, cell phones, etc.). Currently, the HMR allows these devices to be carried both in carry-on baggage and checked baggage. However, this paragraph stipulates that for lithium battery-powered devices carried in checked baggage, the devices must be completely switched off (*i.e.,* not in sleep or hibernation mode). The requirement to turn off battery powered devices was added in the ICAO Technical Instructions and the HMR as a result of temporary security restrictions that prohibited the carriage of large portable electronic devices in the cabin on certain flights. In addition to the restriction of electronic devices in the aircraft cabin, a requirement to turn off all devices powered by lithium batteries when placed in checked baggage was added to prevent risks from overheating in those devices that might remain

[29] *https://www.faa.gov/documentLibrary/media/Advisory_Circular/AC_120-121.pdf.*

active when not powered off (*e.g.,* laptops). This requirement to turn devices off was applied to all devices powered by batteries or cells, regardless of their size and level of risk, primarily to simplify the regulations and facilitate its implementation. However, in light of the need for passengers to carry active devices powered by small cells in checked baggage (*e.g.,* small tracking devices), PHMSA is providing some conditional relief from this requirement for passengers and crew by applying the provision to switch off the device to only those devices powered by lithium metal batteries exceeding 0.3 grams lithium content or lithium-ion batteries exceeding 2.7 Wh. This is consistent with paragraph (a)(26), which allows baggage equipped with lithium batteries to be carried as checked baggage if the batteries do not exceed 0.3 grams of lithium content or 2.7 Wh, respectively. Based on similar battery size criteria in paragraph (a)(26), PHMSA does not expect a reduction in safety of transporting lithium battery-powered devices aboard passenger aircraft under the exception. Moreover, small lithium battery-powered devices are not known or expected to create heat in the same manner as portable electronic devices powered by much larger batteries. PHMSA expects this amendment will avoid unnecessary operational challenges for states, operators, and the travelling public without compromising safety. In response to the NPRM, PHMSA received comments from ALPA, COSTHA, MDTC, and PRBA in support of this revision.

Additionally, PHMSA is adding clarification in paragraph (a) that the most appropriate exception from this section shall be selected when hazardous materials are carried by aircraft passengers or crewmembers. For example, paragraph (a)(19) specifies conditions for battery-powered smoking devices such that a person cannot opt to follow the more generalized portable electronic device conditions of paragraph (a)(18). PHMSA expects this clarification will support the safe transport of excepted hazardous materials by ensuring they will be transported in a manner that is most appropriate for the hazard they may pose.

Finally, PHMSA is making a clarifying amendment to paragraph (a)(26) regarding baggage equipped with lithium batteries. Oftentimes, the baggage has built-in features that cannot be turned off, and the intent of paragraph (a)(26) is that the devices are not required to be turned off when the baggage is checked. Therefore, PHMSA is clarifying paragraph (a)(26) to state plainly that, under the conditions allowing baggage to be checked without removing the batteries, electronic features of the baggage do not have to be switched off if the lithium batteries meet the size limitations in paragraphs (a)(26)(i) and (ii). In response to the NPRM, COSTHA was supportive of this revision but proposes PHMSA add ''lithium'' to the sentence to clarify the requirement is for lithium batteries, *i.e.,* ''Each lithium battery must be of a type which meets the requirements of each test in the UN Manual of Tests and Criteria, Part III, Subsection 38.3 . . .'' PHMSA concurs with COSTHA's comment and has revised paragraph (a)(26) as suggested. Additionally, ALPA, MDTC, and PRBA provided comments in support of this revision.

Section 175.33

Section 175.33 establishes requirements for shipping papers and for the notification of the pilot-in-command when hazardous materials are transported by aircraft. Currently, paragraph (a)(13)(iii) conditionally excepts lithium batteries [30] that are prepared in accordance with the paragraph § 173.185(c) exceptions for smaller cells and batteries from the requirement to be included with the information to be provided to the pilot-in-command. Since smaller lithium cells and batteries that are not packed with or contained in equipment (*e.g.,* UN3480, Lithium ion batteries, and UN3090, Lithium metal batteries) are no longer provided relief from hazard communication requirements, such as shipping papers, PHMSA is making a conforming change to this section to also remove the exception for UN3480 and UN3090 from being excepted from the pilot-in-command requirement. This revision maintains the HMR standard of hazard communication for transportation of lithium cells and batteries by air. In response to the NPRM, PHMSA received comments from COSTHA and MDTC is support of this revision.

E. Part 178

Section 178.37

Section 178.37 outlines the construction requirements for DOT specification 3AA and 3AAX seamless steel cylinders. As summarized in the Section IV. Section-by-Section Review discussion of changes to § 171.7, PHMSA is incorporating by reference the revised third edition (published in 2019) of ISO 9809–1, ''Gas cylinders—Design, construction and testing of refillable seamless steel gas cylinders and tubes—Part 1: Quenched and tempered steel cylinders and tubes with tensile strength less than 1100 *MPa*.'' Currently, ISO 9809–1 is referenced in § 178.37 as an approved methodology by which to perform bend tests, instead of the required flattening test specified in paragraph (j). As currently written, paragraph (j) does not specify which edition is authorized, yet multiple editions are incorporated by reference in § 171.7. PHMSA aims to make the requirement clearer by authorizing use of the most current version of ISO 9809–1 only. PHMSA reviewed the 2019 version and concludes that the bend test provisions in the standard remain a suitable alternative for the flattening test provisions of paragraph (j). This clarification will improve compliance with the appropriate version of ISO 9809–1 and ensure an appropriate level of safety.

Section 178.71

Section 178.71 prescribes specifications for UN pressure receptacles. Several updates to referenced standards pertaining to the design, construction, and maintenance of UN pressure receptacles were added in the 22nd revised edition of the UN Model Regulations. To maintain consistency with the UN Model Regulations, PHMSA is making similar updates to those ISO standards incorporated by reference in this section. In its comments to the NPRM, CGA suggests that PHMSA consider using the current method of stating the applicability of older editions of ISO standards that more specifically set the endpoint for use of the standard to the manufacture of the cylinders. CGA adds that using the word ''manufacture'' better aligns with the term ''applicable for manufacture'' used throughout section 6.2.2 in the 22nd edition of the UN Model Regulations. PHMSA agrees and is revising the language in this section to better reflect the intent in the UN Model Regulations, that the year of manufacture should be used to describe the phaseout of these ISO standards.

Paragraph (f) outlines required conformance to ISO design and construction standards, as applicable, for UN refillable welded cylinders and UN pressure drums in addition to the general requirements of the section. ISO 21172–1:2015, ''*Gas cylinders—Welded steel pressure drums up to 3,000 litres capacity for the transport of gases—Design and construction—Part 1: Capacities up to 1,000 litres,*'' is

[30] UN3480, Lithium-ion batteries, UN3481, Lithium-ion batteries, contained in equipment *or* packed in equipment, UN3090, Lithium metal batteries, and UN3091, Lithium metal batteries contained in equipment *or* packed with equipment.

currently included in paragraph (f)(4) and specifies the minimum requirements for the material, design, fabrication, construction and workmanship, inspection, and testing at manufacture of refillable welded steel pressure drums of volumes up to 1,000 L (264 gallons). The 22nd revised edition of the UN Model Regulations includes an amendment to ISO 21172:2015—ISO 21172–1:2015/Amd1:2018, ''*Gas cylinders—Welded steel pressure drums up to 3 000 litres capacity for the transport of gases—Design and construction—Part 1: Capacities up to 1 000 litres—Amendment 1*.'' ISO 21172–1:2015/Amd1:2018 is a short supplemental amendment to be used in conjunction with ISO 21172–1:2015. It removes the restriction on use of UN pressure drums for transportation of corrosive materials. In addition to adding a reference for use of this supplemental document, the UN Model Regulations added a phase out date of manufacture of December 31, 2026, until which ISO 21172–1:2015 UN pressure drums may continue to be manufactured without the supplement. Similarly, PHMSA is requiring conformance of UN pressure drums with ISO 21172 used in combination with the supplemental amendment, and adding a phaseout date of December 31, 2026, for continued manufacture of UN pressure drums in conformance with ISO 21172–1:2015 without the supplemental amendment.

Additionally, PHMSA is revising paragraphs (g), (k), and (n), which outline the design and construction requirements for UN refillable seamless steel cylinders, UN acetylene cylinders, and UN cylinders for the transportation of adsorbed gases, respectively. Currently this section requires that these UN cylinders conform to the second edition (published in 2010) of one or more of following ISO standards:

(1) ISO 9809–1:2010 ''*Gas cylinders—Refillable seamless steel gas cylinders—Design, construction and testing—Part 1: Quenched and tempered steel cylinders with tensile strength less than 1100 MPa*.''

(2) ISO 9809–2, ''*Gas cylinders—Refillable seamless steel gas cylinders—Design, construction and testing—Part 2: Quenched and tempered steel cylinders with tensile strength greater than or equal to 1100 MPa*.''

(3) ISO 9809–3, ''*Gas cylinders—Refillable seamless steel gas cylinders—Design, construction and testing—Part 3: Normalized steel cylinders*.''

This series of ISO standards specifies minimum requirements for the material, design, construction and workmanship, manufacturing processes, examination, and testing at time of manufacture for refillable seamless steel gas cylinders and tubes with water capacities up to and including 450 L (119 gallons). PHMSA is modifying the design and construction requirements for UN cylinders by authorizing the use of the revised third edition of ISO 9809, Parts 1 through 3. Additionally, PHMSA is adding a phaseout date of December 31, 2026, for continued design, construction, and testing of UN cylinders conforming to the second edition. Finally, PHMSA is removing reference to the first edition of these standards as the authorized date (December 31, 2018) for continued manufacture in accordance with this edition has expired. PHMSA has reviewed these updated standards as part of its regular participation in the review of amendments for the UN Model Regulations and expects their required use will maintain the HMR safety standard for manufacture of UN cylinders.

Paragraph (i) outlines required conformance to ISO design and construction standards for UN non-refillable metal cylinders. PHMSA is removing reference to ISO 11118:1999 and adding a reference to a supplemental amendment, ISO 11118:2015/Amd 1:2019. Current paragraph (i) requires, in addition to the general requirements of the section, conformance with ISO 11118:2015, ''*Gas cylinders—Non-refillable metallic gas cylinders—Specification and test methods*.'' ISO 11118:2015 specifies minimum requirements for the material, design, inspections, construction, workmanship, manufacturing processes, and tests for manufacture of non-refillable metallic gas cylinders of welded, brazed, or seamless construction for compressed and liquefied gases, including the requirements for their non-refillable sealing devices and their methods of testing. PHMSA is revising the valve conformance requirements to include a reference to the 2019 supplemental amendment (ISO 11118:2015/Amd 1:2019), which ISO published to be used in conjunction with an ISO 11118:2015. Additionally, PHMSA is adding an end date of December 31, 2026, to the authorization to use ISO 11118:2015 when not used in conjunction with the supplemental 2019 amendment, ISO 11118:2015 +Amd.1:2019. This supplemental amendment corrects the identity of referenced clauses and corrects numerous typographical errors. PHMSA has reviewed this supplemental amendment as part of its regular participation in the review of amendments for the UN Model Regulations and does not expect any degradation of safety standards in association with the use of these two documents.

Paragraph (m) outlines required conformance to ISO standards for the design and construction requirements of UN metal hydride storage systems. Currently this paragraph requires that metal hydride storage systems conform to ISO 16111:2008, ''*Transportable gas storage devices—Hydrogen absorbed in reversible metal hydride,*'' in addition to the general requirements of this section. As part of its regular review of its existing standards, in 2018 ISO published an updated version of this standard, which was adopted in the 22nd revised edition of the UN Model Regulations. In addition to permitting construction in accordance with ISO 16111:2018, the 22nd revised edition of the UN Model Regulations added a December 31, 2026, phaseout date for the continued construction of UN metal hydride storage systems conforming to ISO 16111:2008. Therefore, to maintain alignment with the UN Model Regulations, PHMSA is adding the same phaseout date of December 31, 2026.

Paragraph (n) prescribes the design and construction requirements for UN cylinders for the transportation of adsorbed gases. In addition to updating reference for required conformance with ISO 9809–1:2019 as discussed above, PHMSA is requiring conformance to an updated version of ISO 11513, ''*Gas cylinders—Refillable welded steel cylinders containing materials for sub-atmospheric gas packaging (excluding acetylene)—Design, construction, testing, use and periodic inspection*.'' ISO 11513 specifies minimum requirements for the material, design, construction, workmanship, examination, and testing at manufacture of refillable welded steel cylinders for the sub-atmospheric pressure storage of liquefied and compressed gases. The second edition has updated packing instructions and allows the use of ultrasonic testing as a nondestructive method for inspection of the cylinders. Currently the HMR requires that UN cylinders that are used for the transportation of adsorbed gases conform to either ISO 9809–1:2010 or ISO 11513:2011. PHMSA is requiring conformance with the updated ISO 11513:2019 in addition to the option of the updated ISO 9809–1:2019 edition. PHMSA also is adding a phaseout date of December 31, 2026, to allow UN cylinders to continue to be built in conformance with ISO 11513:2011.

Updating the reference to this standard aligns the HMR with changes

adopted in the 22nd revised edition of the UN Model Regulations, pertaining to the design and construction of UN cylinders used for the transportation of adsorbed gases. PHMSA has reviewed this edition as part of its regular participation in the review of amendments for the UN Model Regulations and expects that the required use will maintain the HMR safety standard for the manufacture of UN cylinders.

Section 178.75

Section 178.75 prescribes specifications for multiple-element gas containers (MEGCs), which are assemblies of UN cylinders, tubes, or bundles of cylinders interconnected by a manifold and assembled within a framework. PHMSA is revising paragraph (d)(3), which outlines the general design and construction requirements for MEGCs. In its comments to the NPRM, CGA suggests that PHMSA consider using the current method of stating the applicability of older editions of ISO standards that more specifically set the endpoint for use of the standard to the manufacture of the cylinders. CGA adds that using the word ''manufacture'' better aligns with the term ''applicable for manufacture'' used throughout section 6.2.2 in the 22nd edition of the UN Model Regulations. PHMSA agrees and is revising the language in this section to better reflect the intent in the UN Model Regulations that the year of manufacture should be used to describe the phaseout of these ISO standards. Currently this paragraph requires that each pressure receptacle of a MEGC be of the same design type, seamless steel, and constructed and tested according to one of five ISO standards including the second editions of:

(1) ISO 9809–1 ''*Gas cylinders—Refillable seamless steel gas cylinders—Design, construction and testing—Part 1: Quenched and tempered steel cylinders with tensile strength less than 1100 MPa.*''

(2) ISO 9809–2, ''*Gas cylinders—Refillable seamless steel gas cylinders—Design, construction and testing—Part 2: Quenched and tempered steel cylinders with tensile strength greater than or equal to 1100 MPa.*''

(3) ISO 9809–3, ''*Gas cylinders—Refillable seamless steel gas cylinders—Design, construction and testing—Part 3: Normalized steel cylinders.*''

This series of ISO standards specifies minimum requirements for the material, design, construction, workmanship, manufacturing processes, examination, and testing at time of manufacture for refillable seamless steel gas cylinders and tubes with water capacities up to and including 450 L (119 gallons). The standards were updated and revised, as discussed in the Section IV. Section-by-Section Review discussion of § 171.7 changes. PHMSA is authorizing the use of the third edition of ISO 9809, Parts 1 through 3, and adding a phaseout date of December 31, 2026, for continued manufacture of pressure receptacles using the second edition. Finally, PHMSA is removing reference to the first edition of these standards, as the authorization date (December 31, 2018) for continued manufacture in accordance with this edition has expired. Authorizing the use of these updated references to this document will align the HMR with changes adopted in the 22nd revised edition of the UN Model Regulations pertaining to the design and construction of pressure vessels, including MEGCs, while maintaining the HMR safety standard for use of MEGCs.

Section 178.609

Section 178.609 provides test requirements for packagings intended for transport of infectious substances. PHMSA is making an editorial change in paragraph (d) to clarify the drop testing requirements for these packagings. In rule HM–215P,[31] PHMSA made editorial changes in paragraph (g) to clarify the performance requirements for packagings intended to also contain dry ice consistent with changes to the 21st revised edition of UN Model Regulations. However, some additional editorial changes regarding the drop test requirements for these packagings were later added to the UN Model Regulations that were not reflected in HM–215P. Therefore, in this final rule, PHMSA is making additional editorial corrections to this section pertaining to the drop test requirements in paragraph (d). Currently, paragraph (d)(2) states that where the samples are in the shape of a drum, three samples must be dropped, in three different orientations. However, during the course of the finalization of these changes in the UN Model Regulations, an additional precision was made regarding the word ''chime,'' which was removed from these testing requirements and replaced with the word ''edge.'' The wording was changed so as not to specify which direction the package should be dropped. PHMSA does not consider this change to be technical, but editorial, with the intent of conveying the testing protocol, as it was designed, more clearly. For that reason, PHMSA expects this change to maintain the current level of safety for packagings intended to contain infectious substances. This change will simply result in a packaging being tested in line with the design of the original packaging test method. PHMSA received a comment from MDTC in support of this revision.

Section 178.706

Section 178.706 prescribes construction standards for rigid plastic IBCs. PHMSA is revising paragraph (c)(3) to allow the use of recycled plastic (*i.e.,* used material) in the construction of rigid plastic IBCs with the approval of the Associate Administrator consistent with a similar change adopted in the 22nd revised edition of the UN Model Regulations and international standards. PHMSA is including a slight variation from the international provision by requiring prior approval of the Associate Administrator for use of recycled plastics in the construction of rigid plastic IBCs. This approach is consistent with current requirements for the construction of plastic drums and jerricans in § 178.509(b)(1) that restrict use of ''used material'' unless approved by the Associate Administrator. The UN Model Regulations incorporate quality assurance program requirements that require recognition by a governing body. By requiring approval of the Associate Administrator, PHMSA is able to maintain oversight of procedures, such as batch testing, that manufacturers will use to ensure the quality of recycled plastics used in the construction of rigid plastic IBCs. This action will facilitate environmentally friendly processes in the construction of rigid plastic IBCs while maintaining the high safety standards in the production of these packagings for use in transportation of hazardous materials. RIBCA and RIPA provided comments in support of allowing the manufacturing of rigid plastic IBCs from recycled plastics.

Section 178.707

Section 178.707 prescribes construction standards for composite IBCs. PHMSA is revising paragraph (c)(3)(iii) to allow the use of recycled plastic (*i.e.,* used material) in the construction of inner receptacles of composite IBCs, with the approval of the Associate Administrator, consistent with a similar change adopted in the 22nd revised edition of the UN Model Regulations and the modal international standards. PHMSA is including a slight variation from the international provision by requiring prior approval by the Associate Administrator to use recycled plastics in the construction of inner plastic receptacles of composite

[31] 87 FR 44944 (July 26, 2022).

IBCs. This approach is consistent with current requirements for construction of plastic drums and jerricans in § 178.509(b)(1), which restrict use of ''used material,'' unless approved by the Associate Administrator. The UN Model Regulations incorporate quality assurance program requirements that require recognition by a governing body. By requiring approval of the Associate Administrator, PHMSA is able to maintain oversight of procedures, such as batch testing, that manufacturers will use to ensure the quality of recycled plastics used in the construction of inner plastic receptacles of composite IBCs. This action will facilitate environmentally friendly processes in the construction of composite IBCs while maintaining the high safety standards in the production of these packagings for use in transportation of hazardous materials. RIBCA and RIPA provided comments in support of allowing the manufacturing of composite IBCs from recycled plastics.

F. Part 180

Section 180.207

Section 180.207 outlines the requirements for requalification of UN pressure receptacles. The 22nd revised edition of the UN Model Regulations includes numerous updates to referenced standards for inspection and maintenance of UN pressure receptacles. PHMSA is adopting similar amendments in the HMR to maintain consistency with the UN Model Regulations. To that end, PHMSA is revising paragraph (d), which specifies the requalification procedures and conformance standards for specific procedures. Specifically, paragraph (d)(3) currently requires that dissolved acetylene UN cylinders be requalified in accordance with ISO 10462:2013, ''*Gas cylinders—Acetylene cylinders—Periodic inspection and maintenance.*'' ISO 10462:2013 specifies requirements for the periodic inspection and maintenance of acetylene cylinders. It applies to acetylene cylinders with and without solvent, and with a maximum nominal water capacity of 150 L. As part of a periodic review of its standards, the ISO reviewed this standard, and in June 2019 published a short supplemental amendment, ISO 10462:2013/Amd 1:2019. The supplemental document provides amendments that simplify the marking of rejected cylinders to render them unserviceable. This supplemental document is intended for use in conjunction with ISO 10462:2013 for the periodic inspection and maintenance of dissolved acetylene UN cylinders. As such, PHMSA is adding a reference to ISO 10462:2013/Amd 1:2019 in § 180.207(d)(3) where ISO 10462:2013 is currently required, and adding a phaseout date of December 31, 2024, for authorized use of ISO 10462:2013 without the supplemental amendment.

PHMSA is revising paragraph (d)(5) which requires that UN cylinders used for adsorbed gases be inspected and tested in accordance with § 173.302c and ISO 11513:2011. ISO 11513 specifies minimum requirements for the material, design, construction, workmanship, examination, and testing at manufacture of refillable welded steel cylinders for the sub-atmospheric pressure storage of liquefied and compressed gases. The 22nd revised edition of the UN Model Regulations updated references to ISO 11513 to authorize the use of the second edition, ISO 11513:2019. This second edition has been updated to amend packing instructions and remove the prohibition on the use of ultrasonic testing during periodic inspection. PHMSA is authorizing the use of ISO 11513:2019 and adding a sunset date of December 31, 2024, until which the current edition of ISO 11513 may continue to be used.

Lastly, PHMSA is adding paragraph (d)(8) to reference ISO 23088:2020, ''*Gas cylinders—Periodic inspection and testing of welded steel pressure drums—Capacities up to 1 000 L,*'' to provide a requalification standard for UN pressure drums because requalification procedures may differ for pressure drums versus other UN pressure receptacles. The ISO 23088:2020 standard complements the design and construction standard ISO 21172–1, ''*Gas cylinders—Welded steel pressure drums up to 3,000 litre capacity for the transport of gases—Design and construction—Part 1: Capacities up to 1,000 litres,*'' referenced in § 178.71 for UN pressure drums. ISO 21172–1:2015 was added in the HMR in rule HM–215O. PHMSA expects that incorporating by reference a safety standard for requalification will reduce business costs and environmental effects by allowing existing UN pressure drums to be reintroduced into service for continued use for an extended period of time.

These revisions will align the HMR with changes adopted in the 22nd revised edition of the UN Model Regulations pertaining to industry consensus standards for requalification and maintenance procedures for UN pressure receptacles. PHMSA has reviewed this edition as part of its regular participation in the review of amendments for the UN Model Regulations and does not expect any degradation of safety standards in association with its use. PHMSA expects that these amendments will enhance safety by providing cylinder and pressure drum users with the necessary guidelines for the continued use of UN pressure receptacles.

VI. Regulatory Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This final rule is published under the authority of Federal Hazardous Materials Transportation Law (49 U.S.C. 5101 *et seq.*). Section 5103(b) authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous materials in intrastate, interstate, and foreign commerce. Additionally, 49 U.S.C. 5120 authorizes the Secretary to consult with interested international authorities to ensure that, to the extent practicable, regulations governing the transportation of hazardous materials in commerce are consistent with the standards adopted by international authorities. The Secretary has delegated the authority granted in the Federal Hazardous Materials Transportation Law to the PHMSA Administrator at 49 CFR 1.97(b).

B. Executive Orders 12866 and 14094, and DOT Regulatory Policies and Procedures

Executive Order 12866 (''Regulatory Planning and Review''),[32] as amended by Executive Order 14094 (''Modernizing Regulatory Review''),[33] requires that agencies ''should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating.'' Agencies should consider quantifiable measures and qualitative measures of costs and benefits that are difficult to quantify. Further, Executive Order 12866 requires that ''agencies should select those [regulatory] approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.'' Similarly, DOT Order

[32] 58 FR 51735 (Oct. 4, 1993).

[33] 88 FR 21879 (April 11, 2023). PHMSA acknowledges that a recent update to Circular A–4 contemplates that agencies will use a different discount rate than those employed in the discussion below and the RIA beginning in January 2025. However, PHMSA notes that that update to Circular A–4 permits the use of those historical discount rates based on the **Federal Register** publication date of this final rule. See OMB, Circular A–4, ''Regulatory Analysis'' at 93 (Nov. 9, 2023).

2100.6A (''Rulemaking and Guidance Procedures'') requires that regulations issued by PHMSA and other DOT Operating Administrations should consider an assessment of the potential benefits, costs, and other important impacts of the proposed action, and should quantify (to the extent practicable) the benefits, costs, and any significant distributional impacts, including any environmental impacts. Executive Order 12866 and DOT Order 2100.6A require that PHMSA submit ''significant regulatory actions'' to the Office of Management and Budget (OMB) for review. This rulemaking is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not formally reviewed by OMB. This rulemaking is also not considered a significant rule under DOT Order 2100.6A.

The following is a brief summary of costs, savings, and net benefits of some of the amendments in this final rule. PHMSA has developed a more detailed analysis of these costs and benefits in the RIA, a copy of which has been placed in the docket.

PHMSA is amending the HMR to maintain alignment with international regulations and standards, thereby maintaining the high safety standard currently achieved under the HMR; facilitating the safe transportation of; and aligning HMR requirements with anticipated increases in the volume of lithium batteries transported by interstate commerce from electrification of the transportation and other economic sectors. PHMSA examined the likely impacts of finalizing and implementing the provisions in the final rule in order to assess the benefits and costs of these amendments. This analysis allowed PHMSA to quantitatively assess the material effects of four of the amendments in the rulemaking. The effects of six remaining amendments are not quantified but are assessed qualitatively.

PHMSA estimates that the net annualized quantified net cost savings of this rulemaking, using a 2% discount rate, are between $6.3 million and $14.7 million per year. The following table presents a summary of the monetized impacts that these changes may have.

SUMMARY OF NET REGULATORY COST SAVINGS, DISCOUNT RATE = 2%, 2023–2032

[Millions, 2022$]

Amendment	10 Year costs		10 Year cost savings		10 Year net cost savings		Annual costs		Annual cost savings		Annual net cost savings	
	Low	High	Low	High	Low	High	Low	High	Low	High	Low	High
1: Incorporation by reference	$9.2	$9	$0	$0	$(9)	$(9)	$1	$1	$0	$0	$(1)	$(1)
2: HMT additions	0.1	0.1	0	0	(0.1)	(0.1)	0.01	0.01	0	0	(0.01)	(0.01)
3: Self-reactive materials and organic peroxides	0	0	0.01	0.05	0.01	0.05	0	0	0.001	0.005	0.001	0.005
5: Lithium battery changes	5	9	76	147	66	142	0.6	1	8.4	16	7.4	16
Total	14.6	18.7	75.6	146.9	56.8	132.3	1.6	2.1	8.4	16.4	6.3	14.7

Note: Values in parenthesis in net cost savings columns indicate costs. Low net cost savings for each amendment are determined by subtracting the highest costs from the lowest cost savings. High net cost savings are determined by subtracting the lowest costs from the highest cost savings.

The safety and environmental benefits of the final rule have not been quantified. However, PHMSA expects the amendments will help to improve public safety and reduce the risk of environmental harm by maintaining consistency between these international regulations and the HMR. Harmonization of the HMR with international consensus standards could reduce delays and interruptions of hazardous materials during transportation, thereby lowering GHG emissions and safety risks to communities (including minority, low income, underserved, and other disadvantaged populations and communities) in the vicinity of interim storage sites and transportation arteries and hubs.

C. Executive Order 13132

PHMSA analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism'') [34] and the Presidential memorandum (''Preemption'') that was published in the **Federal Register** on May 22, 2009.[35] Executive Order 13132 requires agencies to assure meaningful and timely input by state and local officials in the development of regulatory policies that may have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

The rulemaking may preempt state, local, and Native American tribe requirements, but does not amend any regulation that has substantial direct effects on the states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government. The Federal Hazardous Materials Transportation Law contains an express preemption provision at 49 U.S.C. 5125(b) that preempts state, local, and tribal requirements on certain covered subjects, unless the non-federal requirements are ''substantively the same'' as the federal requirements, including the following:

(1) The designation, description, and classification of hazardous material.

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous material.

(3) The preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents.

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material.

(5) The design, manufacture, fabrication, inspection, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce.

This final rule addresses covered subject items (1), (2), (3), (4), and (5) above, and will preempt state, local, and tribal requirements not meeting the ''substantively the same'' standard. In this instance, the preemptive effect of the final rule is limited to the minimum level necessary to achieve the objectives of the hazardous materials transportation law under which the final rule is promulgated. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

[34] 64 FR 43255 (Aug. 10, 1999).

[35] 74 FR 24693 (May 22, 2009).

D. Executive Order 13175

PHMSA analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments'') [36] and DOT Order 5301.1A (''Department of Transportation Tribal Consultation Policy and Procedures''). Executive Order 13175 and DOT Order 5301.1A require DOT Operating Administrations to assure meaningful and timely input from Native American tribal government representatives in the development of rules that significantly or uniquely affect tribal communities by imposing ''substantial direct compliance costs'' or ''substantial direct effects'' on such communities, or the relationship and distribution of power between the Federal Government and Native American tribes.

PHMSA assessed the impact of the rulemaking and determined that it will not significantly or uniquely affect tribal communities or Native American tribal governments. The changes to the HMR in this final rule are facially neutral and will have broad, national scope; it will neither significantly nor uniquely affect tribal communities, much less impose substantial compliance costs on Native American tribal governments or mandate tribal action. And because the rulemaking will not adversely affect the safe transportation of hazardous materials generally, it will not entail disproportionately high adverse risks for tribal communities. For these reasons, PHMSA finds that the funding and consultation requirements of Executive Order 13175 and DOT Order 5301.1A to apply.

E. Regulatory Flexibility Act, Executive Order 13272, and DOT Policies and Procedures

The Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) requires agencies to review regulations to assess their impact on small entities, unless the agency head certifies that a rulemaking will not have a significant economic impact on a substantial number of small entities, including small businesses; not-for-profit organizations that are independently owned and operated and are not dominant in their fields; and governmental jurisdictions with populations under 50,000. The Regulatory Flexibility Act directs agencies to establish exceptions and differing compliance standards for small businesses, where possible to do so and still meet the objectives of applicable regulatory statutes. Executive Order 13272 (''Proper Consideration of Small Entities in Agency Rulemaking'') [37] requires agencies to establish procedures and policies to promote compliance with the Regulatory Flexibility Act and to ''thoroughly review draft rules to assess and take appropriate account of the potential impact'' of the rules on small businesses, governmental jurisdictions, and small organizations. The DOT posts its implementing guidance on a dedicated web page.[38]

As discussed at length in the RIA, this rulemaking has been developed in accordance with Executive Order 13272 and with DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of draft rules on small entities are properly considered. This final rule facilitates the transportation of hazardous materials in international commerce by providing consistency with international standards. It applies to offerors and carriers of hazardous materials, some of whom are small entities, such as chemical manufacturers, users, suppliers, packaging manufacturers, distributors, and training companies. As discussed at length in the RIA found in the rulemaking docket, the amendments in this final rule will result in net cost savings that will ease the regulatory compliance burden for those and other entities engaged in domestic and international commerce, including trans-border shipments within North America. Additionally, the changes in this final rule will relieve U.S. companies, including small entities competing in foreign markets, from the burden of complying with a dual system of regulations. Therefore, PHMSA certifies that these amendments will not have a significant economic impact on a substantial number of small entities.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*), no person is required to respond to an information collection unless it has been approved by OMB and displays a valid OMB control number. Pursuant to 44 U.S.C. 3506(c)(2)(B) and 5 CFR 1320.8(d), PHMSA must provide interested members of the public and affected agencies with an opportunity to comment on information collection and recordkeeping requests.

PHMSA has analyzed this final rule in accordance with the Paperwork Reduction Act. PHMSA currently accounts for shipping paper burdens under OMB Control Number 2137–0034, ''Hazardous Materials Shipping Papers and Emergency Response Information.'' PHMSA asserts that some amendments may impact OMB Control Number 2137–0034, such as the requirement to indicate the use of Special Provisions A54 on the shipping papers; however, PHMSA expects the overall impact to annual paperwork burden is negligible in relation to the number of burden hours currently associated with this information collection. While PHMSA expects this amendment to reduce the burden associated with this information collection, PHMSA anticipates the reduction is negligible in relation to the total burden hours associated with special permit applications.

Additionally, PHMSA is revising § 173.185(c)(4) to require that shippers and carriers of small lithium batteries not contained in equipment have shipping papers and perform NOPIC checks when transported by air. PHMSA estimates that 45 domestic airlines transporting 4,044 shipments of affected lithium batteries may be affected by this provision. PHMSA estimates a burden increase of 16 minutes per shipment, or 64,704 minutes (1,078 hours), in the first year. PHMSA estimates the increased burden for this information collection as follows:

OMB Control No. 2137–0034: Hazardous Materials Shipping Papers & Emergency Response Information

Annual increase in number of respondents: 45.

Annual increase in number of responses: 4,044.

Annual increase in burden hours: 1,078.

Increase in Annual Burden Cost: $0.

PHMSA accounts for the burden from approval applications in OMB Control Number 2137–0557, ''Approvals for Hazardous Materials.'' PHMSA also is adding new entries to the § 173.224 Self Reactives Table and § 173.225 Organic Peroxide Table, which PHMSA expects estimates will decrease the number of annual approval applicants. However, PHMSA expects that these changes are negligible to the overall impact of the total burden, in relation to the number of burden hours associated with this information collection. Based on estimates provided in the RIA, PHMSA estimates that this final rule will reduce the number of approvals by one annually. PHMSA estimates the reduction in this information collection as follows:

[36] 65 FR 67249 (Nov. 9, 2000).

[37] 67 FR 53461 (Aug. 16, 2002).

[38] DOT, ''Rulemaking Requirements Related to Small Entities,'' *www.transportation.gov/regulations/rulemaking-requirements-concerning-small-entities.*

OMB Control No. 2137–0557: Approvals for Hazardous Materials

Decrease in Annual Number of Respondents: 1.

Decrease in Annual Responses: 1.

Decrease in Annual Burden Hours: 4.75.

Decrease in Annual Burden Cost: $0.

G. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (UMRA; 2 U.S.C. 1501, *et seq.*) requires agencies to assess the effects of federal regulatory actions on state, local, and tribal governments, and the private sector. For any NPRM or final rule that includes a federal mandate that may result in the expenditure by state, local, and tribal governments, or by the private sector, of $100 million or more in 1996 dollars in any given year, the agency must prepare, amongst other things, a written statement that qualitatively and quantitatively assesses the costs and benefits of the federal mandate.

As explained in the RIA, this rulemaking does not impose unfunded mandates under the UMRA. It will not result in costs of $100 million or more in 1996 dollars to either state, local, or tribal governments, or to the private sector, in any one year. A copy of the RIA is available for review in the docket.

H. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321, *et seq.*), requires that federal agencies analyze actions to determine if the action would have a significant impact on the human environment. The Council on Environmental Quality implementing regulations (40 CFR, parts 1500–1508) require federal agencies to conduct an environmental review considering (1) the need for the action, (2) alternatives to the action, (3) probable environmental impacts of the action and alternatives, and (4) the agencies and persons consulted during the consideration process. DOT Order 5610.1C (''Procedures for Considering Environmental Impacts'') establishes departmental procedures for evaluation of environmental impacts under NEPA and its implementing regulations. This Environmental Assessment incorporates by reference the analysis discussing safety impacts that is included in the preamble language above.

1. Purpose and Need

This final rule amends the HMR to maintain alignment with international consensus standards by incorporating into the HMR various amendments, including changes to proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, air transport quantity limitations, and vessel stowage requirements. PHMSA notes that the amendments in this final rule are intended to result in cost savings and reduced regulatory burden for shippers engaged in domestic and international commerce, including trans-border shipments within North America. Absent adoption of the amendments in the final rule, U.S. companies—including numerous small entities competing in foreign markets—may be at an economic disadvantage because of their need to comply with a dual system of regulations. Further, among the HMR amendments introduced in this rulemaking are those aligning HMR requirements with anticipated increases in the volume of lithium batteries transported in interstate commerce, from electrification of the transportation and other economic sectors.

As explained at greater length above in the preamble of this final and in the RIA (each of which is incorporated by reference in this discussion of the environmental impacts of the Final Action Alternative), PHMSA finds that the adoption of the regulatory amendments in this final rule maintains the high safety standard currently achieved under the HMR. PHMSA has evaluated the safety of each of the amendments in this final rule on its own merit, as well as the aggregate impact on transportation safety from adoption of those amendments.

2. Alternatives

In this rulemaking, PHMSA considered the following alternatives:

No Action Alternative

If PHMSA were to select the No Action Alternative, current regulations remain in place and no provisions are amended or added.

Final Action Alternative

This alternative is the current amendments as they appear in this final rule, applying to transport of hazardous materials by various transport modes (highway, rail, vessel, and aircraft). The amendments included in this alternative are more fully discussed in the preamble and regulatory text sections of this final rule.

3. Reasonably Foreseeable Environmental Impacts of the Alternatives

No Action Alternative

If PHMSA were to select the No Action Alternative, the HMR remains unchanged, and no provisions would be amended or added. However, any economic benefits gained through harmonization of the HMR with updated international consensus standards (including, but not limited to, the 22nd revised edition of the UN Model Regulations, the 2023–2024 ICAO Technical Instructions, and amendment 41–22 of the IMDG Code) governing shipping of hazardous materials would not be realized.

Additionally, the No Action Alternative would not adopt enhanced and clarified regulatory requirements expected to maintain the high level of safety in transportation of hazardous materials provided by the HMR. As explained in the preamble to the final rule, consistency between the HMR and current international standards can enhance safety by:

(1) Ensuring the HMR is informed by the latest best practices and lessons learned.

(2) Improving understanding of, and compliance with, pertinent requirements.

(3) Enabling consistent emergency response procedures in the event of a hazardous materials incident.

(4) Facilitating the smooth flow of hazardous materials from their points of origin to their points of destination, thereby avoiding risks to the public and the environment from release of hazardous materials from delays or interruptions in the transportation of those materials.

PHMSA would not capture those benefits if it were to pass on incorporating updated international standards into the HMR under the No Action Alternative.

PHMSA expects that the No Action Alternative could have a modest impact on GHG emissions. Because PHMSA expects that the differences between the HMR and international standards for transportation of hazardous materials could result in transportation delays or interruptions, PHMSA anticipates that there could be modestly higher GHG emissions from some combination of transfer of delayed hazardous materials to and from interim storage, return of improperly shipped materials to their point of origin, and reshipment of returned materials. PHMSA notes that it is unable to quantify such GHG emissions because of the difficulty in identifying the precise quantity or characteristics of such interim storage or returns/re-shipments. PHMSA also submits that, as explained at greater length in Section IV.J., to the extent that there are any delays arising from inconsistencies between the HMR and recently updated international

standards, there could also be adverse impacts from the No Action Alternative for minority populations, low-income populations, or other underserved and other disadvantaged communities.

4. Environmental Justice

Executive Order 12898 (''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations''),[39] and DOT Order 5610.2C (''Department of Transportation Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'') directs federal agencies to take appropriate and necessary steps to identify and address disproportionately high and adverse effects of federal actions on the health or environment of minority and low-income populations ''[t]o the greatest extent practicable and permitted by law.'' DOT Order 5610.2C (''U.S. Department of Transportation Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'') establishes departmental procedures for effectuating E.O. 12898 promoting the principles of environmental justice through full consideration of environmental justice principles throughout planning and decision-making processes in the development of programs, policies, and activities—including PHMSA rulemaking.

PHMSA has evaluated this final rule under the above Executive Order and DOT Order 5610.2C. PHMSA finds the final rule will not cause disproportionately high and adverse human health and environmental effects on minority, low-income, underserved, and other disadvantaged populations and communities. The rulemaking is facially neutral and national in scope; it is neither directed toward a particular population, region, or community, nor is it expected to adversely impact any particular population, region, or community. And because the rulemaking will not adversely affect the safe transportation of hazardous materials generally, its revisions will not entail disproportionately high adverse risks for minority populations, low-income populations, or other underserved and other disadvantaged communities.

PHMSA submits that the final rule will in fact reduce risks to minority populations, low-income populations, or other underserved and other disadvantaged communities. Because the HMR amendments could avoid the release of hazardous materials, and reduce the frequency of delays and returned/resubmitted shipments of hazardous materials resulting from conflict between the current HMR and updated international standards, the final rule will reduce risks to populations and communities—including any minority, low-income, underserved, and other disadvantaged populations and communities—in the vicinity of interim storage sites and transportation arteries and hubs. Additionally, as explained in the above discussion of NEPA, PHMSA expects that these HMR amendments will yield modest GHG emissions reductions, thereby reducing the risks posed by anthropogenic climate change to minority, low-income, underserved, and other disadvantaged populations and communities.

5. Final Action Alternative

As explained further in the discussions in each of the No Action Alternative above, the preamble, and the RIA, PHMSA finds the changes under the Final Action Alternative will maintain the high safety standards currently achieved under the HMR. Harmonization of the HMR with updated international consensus standards is also expected to capture economic efficiencies gained from avoiding shipping delays and compliance costs associated with having to comply with divergent U.S. and international regulatory regimes for transportation of hazardous materials. Further, PHMSA expects revision of the HMR in the final rule will accommodate safe transportation of emerging technologies (in particular components of lithium battery technologies) and facilitate safe shipment of hazardous materials.

PHMSA expects that the Final Action Alternative could realize modest reductions in GHG emissions. Because PHMSA expects that the differences between the HMR and international standards for transportation of hazardous materials could result in delays or interruptions, PHMSA anticipates that the No Action Alternative could result in modestly higher GHG emissions from some combination of transfer of delayed hazardous materials to and from interim storage, return of improperly shipped materials to their point of origin, or reshipment of returned materials. The Final Action Alternative avoids those risks resulting from divergence of the HMR from updated international standards. PHMSA notes, however, that it is unable to quantify any GHG emissions benefits because of the difficulty in identifying the precise quantity or characteristics of such interim storage or returns/re-shipments. Lastly, PHMSA also submits that, as explained at greater length in Section IV.J., the Final Action Alternative would avoid any delayed or interrupted shipments arising from the divergence of the HMR from updated international standards under the No Action Alternative that could result in adverse impacts for minority populations, low-income populations, or other underserved and other disadvantaged communities.

6. Agencies Consulted

PHMSA has coordinated with FAA, FMCSA, FRA, and USCG in the development of this final rule.

7. Finding of No Significant Impact

PHMSA finds the adoption of the Final Action Alternative's regulatory amendments will maintain the HMR's current high level of safety for shipments of hazardous materials transported by highway, rail, aircraft, and vessel, and as such finds the HMR amendments in the final rule will have no significant impact on the human environment. PHMSA finds that the Final Action Alternative will avoid adverse safety, environmental justice, and GHG emissions impacts of the No Action Alternative. Furthermore, based on PHMSA's analysis of these provisions described above, PHMSA finds that codification and implementation of this rule will not result in a significant impact to the human environment. This finding is consistent with Executive Order 14096 (''Revitalizing Our Nation's Commitment to Environmental Justice for All'') [40] by achieving several goals, including continuing to deepen the Biden-Harris Administration's whole of government approach to environmental justice and to better protect overburdened communities from pollution and environmental harms.

I. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit and including any personal information that the commenter includes, in the system of records notice. DOT's complete Privacy Act Statement is in the **Federal Register** published on April 11, 2000,[41] or on DOT's website at *http://www.dot.gov/privacy.*

[39] 59 FR 7629 (Feb. 16, 1994).

[40] 88 FR 25251 (April 26, 2023).

[41] 65 FR 19477 (Apr. 11, 2000).

J. Executive Order 13609 and International Trade Analysis

Executive Order 13609 (''Promoting International Regulatory Cooperation'')[42] requires that agencies consider whether the impacts associated with significant variations between domestic and international regulatory approaches are unnecessary or may impair the ability of American business to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

Similarly, the Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465) (as amended, the Trade Agreements Act), prohibits agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to the Trade Agreements Act, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standards have a legitimate domestic objective—such as providing for safety—and do not operate to exclude imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

PHMSA participates in the establishment of international standards to protect the safety of the American public, and it has assessed the effects of the final rule to ensure that it does not cause unnecessary obstacles to foreign trade. In fact, the final rule is expected to facilitate international trade by harmonizing U.S. and international requirements for the transportation of hazardous materials so as to reduce regulatory burdens and minimize delays arising from having to comply with divergent regulatory requirements. Accordingly, this rulemaking is consistent with Executive Order 13609 and PHMSA's obligations under the Trade Agreements Act.

[42] 77 FR 26413 (May. 4, 2012).

K. National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) directs federal agencies to use voluntary consensus standards in their regulatory activities, unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specification of materials, test methods, or performance requirements) that are developed or adopted by voluntary consensus standard bodies. This rulemaking involves multiple voluntary consensus standards, which are discussed at length in the discussion on § 171.7. *See* Section 171.7 of the Section-by-Section Review for further details.

L. Executive Order 13211

Executive Order 13211 (''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'')[43] requires federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' Executive Order 13211 defines a ''significant energy action'' as any action by an agency (normally published in the **Federal Register**) that promulgates, or is expected to lead to the promulgation of, a final rule or regulation that (1)(i) is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy (including a shortfall in supply, price increases, and increased use of foreign supplies); or (2) is designated by the Administrator of the Office of Information and Regulatory Affairs (OIRA) as a significant energy action.

This final rule is not a significant action under Executive Order 12866, nor is it expected to have an annual effect on the economy of $100 million. Further, this final rule will not have a significant adverse effect on the supply, distribution, or use of energy in the United States. The Administrator of OIRA has not designated the final rule as a significant energy action. For additional discussion of the anticipated economic impact of this rulemaking, please review the RIA posted in the rulemaking docket.

M. Cybersecurity and Executive Order 14028

Executive Order 14028 (''Improving the Nation's Cybersecurity'')[44] directed the federal government to improve its efforts to identify, deter, and respond to ''persistent and increasingly sophisticated malicious cyber campaigns.'' PHMSA has considered the effects of the final rule and determined that its regulatory amendments will not materially affect the cybersecurity risk profile for transportation of hazardous materials.

[43] 66 FR 28355 (May 22, 2001).

[44] 86 FR 26633 (May 17, 2021).

N. Severability

The purpose of this final rule is to operate holistically and, in concert with existing HMR requirements, provide defense-in-depth to ensure safe transportation of hazardous materials. However, PHMSA recognizes that certain provisions focus on unique topics. Therefore, PHMSA finds that the various provisions of this final rule are severable and able to operate functionally if severed from each other. In the event a court were to invalidate one or more of the unique provisions of this final rule, the remaining provisions should stand, thus allowing their continued effect.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste, Incorporation by reference, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Incorporation by reference, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 175

Air carriers, Hazardous materials transportation, Incorporation by reference, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 176

Cargo vessels, Hazardous materials transportation, Incorporation by reference, Maritime carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 178

Hazardous materials transportation, Incorporation by reference, Motor vehicle safety, Packaging and

containers, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous materials transportation, Incorporation by reference, Motor carriers, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, PHMSA is amending 49 CFR chapter I as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

■ 1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; Pub. L. 101–410 section 4; Pub. L. 104–134, section 31001; Pub. L. 114–74 section 701 (28 U.S.C. 2461 note); 49 CFR 1.81 and 1.97.

■ 2. In § 171.7:
■ a. Revise paragraphs (t)(1), (v)(2), and (w)(32) through (81);
■ b. Add paragraphs (w)(82) through (92); and
■ c. Revise paragraphs (aa)(3) and (dd)(1) through (4).

The revisions and additions read as follows:

§ 171.7 Reference material.

* * * * *

(t) * * *

(1) ICAO Doc 9284 Technical Instructions for the Safe Transport of Dangerous Goods by Air, 2023–2024 Edition, 2022; into §§ 171.8; 171.22 through 171.24; 172.101; 172.202; 172.401; 172.407; 172.512; 172.519; 172.602; 173.56; 173.320; 175.10, 175.33; 178.3.

* * * * *

(v) * * *

(2) International Maritime Dangerous Goods Code (IMDG Code), Incorporating Amendment 41–22 (English Edition), 2022 Edition; 2022; into §§ 171.22; 171.23; 171.25; 172.101; 172.202; 172.203; 172.401; 172.407; 172.502; 172.519; 172.602; 173.21; 173.56; 176.2; 176.5; 176.11; 176.27; 176.30; 176.83; 176.84; 176.140; 176.720; 176.906; 178.3; 178.274.

(i) Volume 1, Incorporating Amendment 41–22 (Vol. 1).

(ii) Volume 2, Incorporating Amendment 41–22 (Vol. 2).

(w) * * *

(32) ISO 9809–1:2019(E), Gas cylinders—Design, construction and testing of refillable seamless steel gas cylinders and tubes—Part 1: Quenched and tempered steel cylinders and tubes with tensile strength less than 1100 MPa, Third edition, 2019–08; into §§ 178.37; 178.71; 178.75.

(33) ISO 9809–2:2000(E): Gas cylinders—Refillable seamless steel gas cylinders—Design, construction and testing—Part 2: Quenched and tempered steel cylinders with tensile strength greater than or equal to 1 100 MPa., First edition, June 2000; into §§ 178.71; 178.75.

(34) ISO 9809–2:2010(E): Gas cylinders—Refillable seamless steel gas cylinders—Design, construction and testing—Part 2: Quenched and tempered steel cylinders with tensile strength greater than or equal to 1100 MPa., Second edition, 2010–04; into §§ 178.71; 178.75.

(35) ISO 9809–2:2019(E): Gas cylinders—Design, construction and testing of refillable seamless steel gas cylinders and tubes—Part 2: Quenched and tempered steel cylinders and tubes with tensile strength greater than or equal to 1100 MPa, Third edition, 2019–08; into §§ 178.71; 178.75.

(36) ISO 9809–3:2000(E): Gas cylinders—Refillable seamless steel gas cylinders—Design, construction and testing—Part 3: Normalized steel cylinders, First edition, December 2000; into §§ 178.71; 178.75.

(37) ISO 9809–3:2010(E): Gas cylinders—Refillable seamless steel gas cylinders—Design, construction and testing—Part 3: Normalized steel cylinders, Second edition, 2010–04; into §§ 178.71; 178.75.

(38) ISO 9809–3:2019(E), Gas cylinders—Design, construction and testing of refillable seamless steel gas cylinders and tubes—Part 3: Normalized steel cylinders and tubes, Third edition, 2019–08; into §§ 178.71; 178.75

(39) ISO 9809–4:2014(E), Gas cylinders—Refillable seamless steel gas cylinders—Design, construction, and testing—Part 4: Stainless steel cylinders with an Rm value of less than 1 100 MPa, First edition, 2014–07; into §§ 178.71; 178.75.

(40) ISO 9978:1992(E), Radiation protection—Sealed radioactive sources—Leakage test methods. First edition, (February 15, 1992); into § 173.469.

(41) ISO 10156:2017(E), Gas cylinders—Gases and gas mixtures—Determination of fire potential and oxidizing ability for the selection of cylinder valve outlets, Fourth edition, 2017–07; into § 173.115.

(42) ISO 10297:1999(E), Gas cylinders—Refillable gas cylinder valves—Specification and type testing, First edition, 1995–05; into §§ 173.301b; 178.71.

(43) ISO 10297:2006(E), Transportable gas cylinders—Cylinder valves—Specification and type testing, Second edition, 2006–01; into §§ 173.301b; 178.71.

(44) ISO 10297:2014(E), Gas cylinders—Cylinder valves—Specification and type testing, Third edition, 2014–07; into §§ 173.301b; 178.71.

(45) ISO 10297:2014/Amd 1:2017(E), Gas cylinders—Cylinder valves—Specification and type testing—Amendment 1: Pressure drums and tubes, Third edition, 2017–03; into §§ 173.301b; 178.71.

(46) ISO 10461:2005(E), Gas cylinders—Seamless aluminum-alloy gas cylinders—Periodic inspection and testing, Second Edition, 2005–02 and Amendment 1, 2006–07; into § 180.207.

(47) ISO 10462:2013(E), Gas cylinders—Acetylene cylinders—Periodic inspection and maintenance, Third edition, 2013–12–15; into § 180.207.

(48) ISO 10462:2013/Amd 1:2019(E), ''Gas cylinders—Acetylene cylinders—Periodic inspection and maintenance, Third edition, 2013–12–15, Amendment 1, 2019–06; into § 180.207.

(49) ISO 10692–2:2001(E), Gas cylinders—Gas cylinder valve connections for use in the micro-electronics industry—Part 2: Specification and type testing for valve to cylinder connections, First edition, 2001–08; into §§ 173.40; 173.302c.

(50) ISO 11114–1:2012(E), Gas cylinders—Compatibility of cylinder and valve materials with gas contents—Part 1: Metallic materials, Second edition, 2012–03; into §§ 172.102; 173.301b; 178.71.

(51) ISO 11114–1:2012/Amd 1:2017(E), Gas cylinders—Compatibility of cylinder and valve materials with gas contents—Part 1: Metallic materials—Amendment 1, Second edition, 2017–01; into §§ 172.102, 173.301b, 178.71.

(52) ISO 11114–2:2013(E), Gas cylinders—Compatibility of cylinder and valve materials with gas contents—Part 2: Non-metallic materials, Second edition, 2013–04; into §§ 173.301b; 178.71.

(53) ISO 11117:1998(E): Gas cylinders—Valve protection caps and valve guards for industrial and medical gas cylinders—Design, construction, and tests, First edition, 1998–08–01; into § 173.301b.

(54) ISO 11117:2008(E): Gas cylinders—Valve protection caps and valve guards—Design, construction, and tests, Second edition, 2008–09; into § 173.301b.

(55) ISO 11117:2008/Cor.1:2009(E): Gas cylinders—Valve protection caps and valve guards—Design, construction, and tests, Technical Corrigendum 1, 2009–05; into § 173.301b.

(56) ISO 11117:2019(E), ''Gas cylinders—Valve protection caps and

guards—Design, construction and tests, 2019–11; into § 173.301b

(57) ISO 11118(E), Gas cylinders—Non-refillable metallic gas cylinders—Specification and test methods, First edition, October 1999; into § 178.71.

(58) ISO 11118:2015(E), Gas cylinders—Non-refillable metallic gas cylinders—Specification and test methods, Second edition, 2015–09; into §§ 173.301b; 178.71.

(59) ISO 11118:2015/Amd 1:2019(E), Gas cylinders—Non-refillable metallic gas cylinders—Specification and test methods, Second edition, 2015–09–15—Amendment 1, 2019–10; into §§ 173.301b; 178.71.

(60) ISO 11119–1(E), Gas cylinders—Gas cylinders of composite construction—Specification and test methods—Part 1: Hoop-wrapped composite gas cylinders, First edition, May 2002, into § 178.71.

(61) ISO 11119–1:2012(E), Gas cylinders—Refillable composite gas cylinders and tubes—Design, construction, and testing—Part 1: Hoop wrapped fibre reinforced composite gas cylinders and tubes up to 450 L, Second edition, 2012–08; into §§ 178.71; 178.75.

(62) ISO 11119–2(E), Gas cylinders—Gas cylinders of composite construction—Specification and test methods—Part 2: Fully wrapped fibre reinforced composite gas cylinders with load-sharing metal liners, First edition, May 2002; into § 178.71.

(63) ISO 11119–2:2012(E), Gas cylinders—Refillable composite gas cylinders and tubes—Design, construction, and testing—Part 2: Fully wrapped fibre reinforced composite gas cylinders and tubes up to 450 l with load-sharing metal liners, Second edition, 2012–07; into §§ 178.71; 178.75.

(64) ISO 11119–2:2012/Amd.1:2014(E), Gas cylinders—Refillable composite gas cylinders and tubes—Design, construction and testing—Part 2: Fully wrapped fibre reinforced composite gas cylinders and tubes up to 450 l with load-sharing metal liners, Amendment 1, 2014–08; into §§ 178.71; 178.75.

(65) ISO 11119–3(E), Gas cylinders of composite construction—Specification and test methods—Part 3: Fully wrapped fibre reinforced composite gas cylinders with non-load-sharing metallic or non-metallic liners, First edition, September 2002; into § 178.71.

(66) ISO 11119–3:2013(E), Gas cylinders—Refillable composite gas cylinders and tubes—Design, construction and testing—Part 3: Fully wrapped fibre reinforced composite gas cylinders and tubes up to 450 l with non-load-sharing metallic or non-metallic liners, Second edition, 2013–04; into §§ 178.71; 178.75.

(67) ISO 11119–4:2016(E), Gas cylinders—Refillable composite gas cylinders—Design, construction, and testing—Part 4: Fully wrapped fibre reinforced composite gas cylinders up to 150 l with load-sharing welded metallic liners, First edition, 2016–02; into § 178.71; 178.75.

(68) ISO 11120(E), Gas cylinders—Refillable seamless steel tubes of water capacity between 150 l and 3000 l—Design, construction, and testing, First Edition, 1999–03; into §§ 178.71; 178.75.

(69) ISO 11120:2015(E), Gas cylinders—Refillable seamless steel tubes of water capacity between 150 l and 3000 l—Design, construction, and testing, Second edition, 2015–02; into §§ 178.71; 178.75.

(70) ISO 11513:2011(E), Gas cylinders—Refillable welded steel cylinders containing materials for sub-atmospheric gas packaging (excluding acetylene)—Design, construction, testing, use, and periodic inspection, First edition, 2011–09; into §§ 173.302c; 178.71; 180.207.

(71) ISO 11513:2019(E), Gas cylinders—Refillable welded steel cylinders containing materials for sub-atmospheric gas packaging (excluding acetylene)—Design, construction, testing, use, and periodic inspection, Second edition, 2019–09; into §§ 173.302c; 178.71; 180.207.

(72) ISO 11621(E), Gas cylinders—Procedures for change of gas service, First edition, April 1997; into §§ 173.302, 173.336, 173.337.

(73) ISO 11623(E), Transportable gas cylinders—Periodic inspection and testing of composite gas cylinders, First edition, March 2002; into § 180.207.

(74) ISO 11623:2015(E), Gas cylinders—Composite construction—Periodic inspection and testing, Second edition, 2015–12; into § 180.207.

(75) ISO 13340:2001(E), Transportable gas cylinders—Cylinder valves for non-refillable cylinders—Specification and prototype testing, First edition, 2004–04; into § 178.71.

(76) ISO 13736:2008(E), Determination of flash point—Abel closed-cup method, Second Edition, 2008–09; into § 173.120.

(77) ISO 14246:2014(E), Gas cylinders—Cylinder valves—Manufacturing tests and examination, Second Edition, 2014–06; into § 178.71.

(78) ISO 14246:2014/Amd 1:2017(E), Gas cylinders—Cylinder valves—Manufacturing tests and examinations—Amendment 1, Second edition, 2017–06; into § 178.71.

(79) ISO 16111:2008(E), Transportable gas storage devices—Hydrogen absorbed in reversible metal hydride, First edition, 2008–11; into §§ 173.301b; 173.311; 178.71.

(80) ISO 16111:2018(E), Transportable gas storage devices—Hydrogen absorbed in reversible metal hydride, Second edition, 2018–08; into §§ 173.301b; 173.311; 178.71.

(81) ISO 16148:2016(E), Gas cylinders—Refillable seamless steel gas cylinders and tubes—Acoustic emission examination (AT) and follow-up ultrasonic examination (UT) for periodic inspection and testing, Second edition, 2016–04; into § 180.207.

(82) ISO 17871:2015(E), Gas cylinders—Quick-release cylinder valves—Specification and type testing, First edition, 2015–08; into § 173.301b.

(83) ISO 17871:2020(E), Gas cylinders—Quick-release cylinder valves—Specification and type testing, Second edition, 2020–07; into § 173.301b.

(84) ISO 17879:2017(E), Gas cylinders—Self-closing cylinder valves—Specification and type testing, First edition, 2017–07; into §§ 173.301b; 178.71.

(85) ISO 18172–1:2007(E), Gas cylinders—Refillable welded stainless steel cylinders—Part 1: Test pressure 6 MPa and below, First Edition, 2007–03–01; into § 178.71.

(86) ISO 20475:2018(E), Gas cylinders—Cylinder bundles—Periodic inspection and testing, First edition, 2018–02; into § 180.207.

(87) ISO 20703:2006(E), Gas cylinders—Refillable welded aluminum-alloy cylinders—Design, construction, and testing, First Edition, 2006–05; into § 178.71.

(88) ISO 21172–1:2015(E), Gas cylinders—Welded steel pressure drums up to 3,000 litres capacity for the transport of gases—Design and construction—Part 1: Capacities up to 1000 litres, First edition, 2015–04; into § 178.71.

(89) ISO 21172–1:2015/Amd 1:2018(E), Gas cylinders—Welded steel pressure drums up to 3000 litres capacity for the transport of gases—Design and construction—Part 1: Capacities up to 1000 litres, First edition, 2015–04–01, Amendment 1,2018–11; into § 178.71.

(90) ISO 22434:2006(E), Transportable gas cylinders—Inspection and maintenance of cylinder valves, First edition, 2006–09; into § 180.207.

(91) ISO 23088:2020, Gas cylinders—Periodic inspection and testing of welded steel pressure drums—Capacities up to 1000 l, First edition, 2020–02; into § 180.207.

(92) ISO/TR 11364:2012(E), Gas cylinders—Compilation of national and international valve stem/gas cylinder neck threads and their identification and marking system, First edition, 2012–12; into § 178.71.

* * * * *

(aa) * * *

(3) Test No. 439: *In Vitro* Skin Irritation: Reconstructed Human Epidermis (RHE) Test Method, OECD Guidelines for the Testing of Chemicals, 29 July 2015; into § 173.137.

* * * * *

(dd) * * *

(1) UN Recommendations on the Transport of Dangerous Goods, Model Regulations (UN Recommendations), 22nd revised edition, (2021); into §§ 171.8; 171.12; 172.202; 172.401; 172.407; 172.502; 172.519; 173.22; 173.24; 173.24b; 173.40; 173.56; 173.192; 173.302b; 173.304b; 178.75; 178.274 as follows:

(i) Volume I, ST/SG/AC.10/1/Rev.22 (Vol. I).

(ii) Volume II, ST/SG/AC.10/1/Rev.22 (Vol. II).

(2) Manual of Tests and Criteria; into §§ 171.24, 172.102; 173.21; 173.56; 173.57; 173.58; 173.60; 173.115; 173.124; 173.125; 173.127; 173.128; 173.137; 173.185; 173.220; 173.221; 173.224; 173.225; 173.232; part 173, appendix H; 175.10; 176.905; 178.274 as follows:

(i) Seventh revised edition (2019).

(ii) Seventh Revised Edition, Amendment 1 (2021).

(3) Globally Harmonized System of Classification and Labelling of Chemicals (GHS), 9th Revised Edition, ST/SG/AC.10/30/Rev.9 (2021); into § 172.401.

(4) Agreement concerning the International Carriage of Dangerous Goods by Road (ADR), copyright 2020; into §§ 171.8; 171.23 as follows:

(i) Volume I, ECE/TRANS/300 (Vol. I).

(ii) Volume II, ECE/TRANS/300 (Vol. II).

(iii) Corrigendum, ECE/TRANS/300 (Corr. 1).

* * * * *

■ 3. In § 171.12, revise paragraph (a)(4)(iii) to read as follows:

§ 171.12 North American Shipments.

* * * * *

(a) * * *

(4) * * *

(iii) Authorized CRC, BTC, CTC, or TC specification cylinders that correspond with a DOT specification cylinder are as follows:

TABLE 1 TO PARAGRAPH (a)(4)(iii): CORRESPONDING SPECIFICATION CYLINDERS

TC	DOT (some or all of these specifications may instead be marked with the prefix ICC)	CTC (some or all of these specifications may instead be marked with the prefix BTC or CRC)
TC–3AM	DOT–3A [ICC–3]	CTC–3A
TC–3AAM	DOT–3AA	CTC–3AA
TC–3ANM	DOT–3BN	CTC–3BN
TC–3EM	DOT–3E	CTC–3E
TC–3HTM	DOT–3HT	CTC–3HT
TC–3ALM	DOT–3AL	CTC–3AL
	DOT–3B	CTC–3B
TC–3AXM	DOT–3AX	CTC–3AX
TC–3AAXM	DOT–3AAX	CTC–3AAX
	DOT–3A480X	CTC–3A480X
TC–3TM	DOT–3T	.....
TC–4AAM33	DOT–4AA480	CTC–4AA480
TC–4BM	DOT–4B	CTC–4B
TC–4BM17ET	DOT–4B240ET	CTC–4B240ET
TC–4BAM	DOT–4BA	CTC–4BA
TC–4BWM	DOT–4BW	CTC–4BW
TC–4DM	DOT–4D	CTC–4D
TC–4DAM	DOT–4DA	CTC–4DA
TC–4DSM	DOT–4DS	CTC–4DS
TC–4EM	DOT–4E	CTC–4E
TC–39M	DOT–39	CTC–39
TC–4LM	DOT–4L	CTC–4L
TC–8WM	DOT–8	CTC–8
TC–8WAM	DOT–8AL	CTC–8AL

* * * * *

■ 4. In § 171.23, revise paragraph (a)(3) to read as follows:

§ 171.23 Requirements for specific materials and packagings transported under the ICAO Technical Instructions, IMDG Code, Transport Canada TDG Regulations, or the IAEA Regulations.

(a) * * *

(3) *Pi-marked cylinders.* Cylinders with a water capacity not exceeding 150 L and that are marked with a pi mark, in accordance with the European Directive 2010/35/EU (IBR, see § 171.7), on transportable pressure equipment (TPED), and that comply with the requirements of Packing Instruction P200 or P208, and 6.2 of the Agreement Concerning the International Carriage of Dangerous Goods by Road (ADR) (IBR, see § 171.7), concerning pressure relief device use, test period, filling ratios, test pressure, maximum working pressure, and material compatibility for the lading contained or gas being filled, are authorized as follows:

(i) Filled cylinders imported for intermediate storage, transport to point of use, discharge, and export without further filling; and

(ii) Cylinders imported or domestically sourced for the purpose of filling, intermediate storage, and export.

(iii) The bill of lading or other shipping paper must identify the cylinder and include the following certification: ''This cylinder (These cylinders) conform(s) to the requirements for pi-marked cylinders found in § 171.23(a)(3).''

* * * * *

■ 5. In § 171.25:

■ a. Revise paragraphs (c)(3) and (4); and

■ b. Add paragraph (c)(5).

To read as follows:

§ 171.25 Additional requirements for the use of the IMDG Code.

* * * * *

(c) * * *

(3) Except as specified in this subpart, for a material poisonous (toxic) by inhalation, the T Codes specified in Column 13 of the Dangerous Goods List in the IMDG Code may be applied to the transportation of those materials in IM, IMO, and DOT Specification 51 portable tanks, when these portable tanks are authorized in accordance with the requirements of this subchapter;

(4) No person may offer an IM or UN portable tank containing liquid hazardous materials of Class 3, PG I or II, or PG III with a flash point less than 100 °F (38 °C); Division 5.1, PG I or II; or Division 6.1, PG I or II, for unloading while it remains on a transport vehicle with the motive power unit attached, unless it conforms to the requirements in § 177.834(o) of this subchapter; and

(5) No person may offer a UN fiber-reinforced plastic portable tank meeting the provisions of Chapter 6.10 of the IMDG Code (IBR, see § 171.7), except for transportation falling within the single port area criteria in paragraph (d) of this section.

* * * * *

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, TRAINING REQUIREMENTS, AND SECURITY PLANS

■ 6. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.81, 1.96 and 1.97.

■ 7. In § 172.101:

■ a. Revise the section heading and paragraph (c)(12)(ii); and

■ b. In the Hazardous Materials Table, remove the entries under ''[REMOVE]'', add the entries under ''[ADD]'', and revise entries under ''[REVISE]'' in the appropriate alphabetical sequence.

The additions and revisions read as follows:

§ 172.101 Purpose and use of the hazardous materials table.

* * * * *

(c) * * *

(12) * * *

(ii) *Generic or n.o.s. descriptions.* If an appropriate technical name is not shown in the Table, selection of a proper shipping name shall be made from the generic or n.o.s. descriptions corresponding to the specific hazard class, packing group, hazard zone, or subsidiary hazard, if any, for the material. The name that most appropriately describes the material shall be used, *e.g.,* an alcohol not listed by its technical name in the Table shall be described as ''Alcohol, n.o.s.'' rather than ''Flammable liquid, n.o.s.'' Some mixtures may be more appropriately described according to their application, such as ''Coating solution'' or ''Extracts, liquid, for flavor or aroma,'' rather than by an n.o.s. entry, such as ''Flammable liquid, n.o.s.'' It should be noted, however, that an n.o.s. description as a proper shipping name may not provide sufficient information for shipping papers and package markings. Under the provisions of subparts C and D of this part, the technical name of one or more constituents that makes the product a hazardous material may be required in association with the proper shipping name.

* * * * *

§ 172.101 Hazardous Materials Table

BILLING CODE 4910–60–P

							(8)			(9)		(10)	
							Packaging (§ 173.***)			Quantity limitations (see §§ 173.27 and 175.75)		Vessel stowage	
Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification Numbers	PG	Label Codes	Special Provisions (§ 172.102)	Exceptions (8A)	Non-bulk (8B)	Bulk (8C)	Passenger aircraft/rail (9A)	Cargo aircraft only (9B)	Location (10A)	Other (10B)
(1)	(2)	(3)	(4)	(5)	(6)	(7)							
	[REMOVE]												
	*		*		*		*		*		*		*
G	Desensitized explosives, solid, n.o.s.	4.1	UN3380	I	4.1	164, 197	None	211	None	Forbidden	Forbidden	D	28, 36
	*		*		*		*		*		*		*
	Ethyl bromide	6.1	UN1891	II	6.1	IB2, IP8, T7, TP2, TP13	153	202	243	5 L	60 L	B	40, 85
	*		*		*		*		*		*		*
	Extracts, aromatic, liquid	3	UN1169	II	3	149, IB2, T4, TP1, TP8	150	202	242	5 L	60 L	B	
	Extracts, aromatic, liquid	3	UN1169	III	3	B1, IB3, T2, TP1	150	203	242	60 L	220 L	A	
	Extracts, flavoring, liquid	3	UN1197	II	3	149, IB2, T4, TP1, TP8	150	202	242	5 L	60 L	B	
	Extracts, flavoring, liquid	3	UN1197	III	3	B1, IB3, T2, TP1	150	203	242	60 L	220 L	A	
	*		*		*		*		*		*		*
	Hypochlorite solutions	8	UN1791	II	8	148, A7, B2, B15, IB2, IP5, N34, T7, TP2, TP24	154	202	242	1 L	30 L	B	26, 53, 58
	*		*		*		*		*		*		*
	[ADD]												
	*		*		*		*		*		*		*
G	Desensitized explosive, solid, n.o.s.	4.1	UN3380	I	4.1	164, 197	None	211	None	Forbidden	Forbidden	D	28, 36
	*		*		*		*		*		*		*
	Cobalt dihydroxide powder, *containing not less than 10% respirable particles*	6.1	UN3550	I	6.1	IP22, TP33	None	211	242	5 kg	50 kg	A	
	*		*		*		*		*		*		*
	Ethyl bromide	3	UN1891	II	3, 6.1	IB2, IP8, T7, TP2, TP13	150	202	243	1 L	60 L	B	40, 85
	*		*		*		*		*		*		*
	Extracts, liquid, *for flavor or aroma*	3	UN1197	II	3	149, IB2, T4, TP1, TP8	150	202	242	5 L	60 L	B	

	Extracts, liquid, *for flavor or aroma*	3	UN1197	III	3	B1, IB3, T2, TP1	150	203	242	60 L	220 L	A	
	*		*		*		*		*		*		*
	Hypochlorite solutions	8	UN1791	II	8	148, A7, B2, B15, IB2, IP5, N34, T7, TP2, TP24	154	202	242	1 L	30 L	B	26
	*		*		*		*		*		*		*
	[REVISE]												
	*		*		*		*		*		*		*
G	Articles containing miscellaneous dangerous goods, n.o.s.	9	UN3548			391, A224	None	232	232	Forbidden	Forbidden	A	
	Articles containing non-flammable, non-toxic gas, n.o.s.	2.2	UN3538		2.2	391,396, A225	None	232	232	Forbidden	Forbidden	A	
	*		*		*		*		*		*		*
	Batteries, wet, filled with acid, *electric storage*	8	UN2794		8	A51	159	159	159	30 kg	400 kg	A	53, 58, 146
	Batteries, wet, filled with alkali, *electric storage*	8	UN2795		8	A51	159	159	159	30 kg	400 kg	A	52, 146
	*		*		*		*		*		*		*
	Butylene *see also* Petroleum gases, liquefied	2.1	UN1012		2.1	19, 398, T50	306	304	314, 315	Forbidden	150 kg	E	40
	*		*		*		*		*		*		*
	Batteries, containing sodium	4.3	UN3292		4.3		189	189	189	Forbidden	400 kg	A	13, 148
	*		*		*		*		*		*		*
G	Corrosive liquids, toxic, n.o.s.	8	UN2922	I	8, 6.1	A4, A7, B10, T14, TP2, TP13, TP27	None	201	243	0.5 L	2.5 L	B	40
G	Corrosive solids, toxic, n.o.s.	8	UN2923	I	8, 6.1	A5, IB7, T6, TP33	None	211	242	1 kg	25 kg	B	40
	*		*		*		*		*		*		*
	Detonators, *electronic programmable for blasting*	1.4B	UN0512		1.4B	148	63(f), 63(g)	62	None	Forbidden	75 kg	05	25

	Nitrocellulose with alcohol *with not less than 25 percent alcohol by mass, and with not more than 12.6 percent nitrogen, by dry mass*	4.1	UN2556	II	4.1	W31	None	212	None	1 kg	15 kg	D	12, 25, 28, 36
	Nitrocellulose, *with not more than 12.6 percent nitrogen, by dry mass* mixture with *or* without plasticizer, with *or* without pigment	4.1	UN2557	II	4.1	44, W31	None	212	None	1 kg	15 kg	D	28, 36
	Nitrocellulose with water *with not less than 25 percent water, by mass*	4.1	UN2555	II	4.1	W31	None	212	None	15 kg	50 kg	E	28, 36
*			*			*			*			*	*
G	Pesticides, liquid, flammable, toxic, *flash point less than 23 degrees C*	3	UN3021	I	3, 6.1	B5, T14, TP2, TP13, TP27	None	201	243	Forbidden	30 L	B	40
				II	3, 6.1	IB2, T11, TP2, TP13, TP27	150	202	243	1 L	60 L	B	40
*			*			*			*			*	*
G	Polymerizing substance, liquid, stabilized, n.o.s.	4.1	UN3532	III	4.1	387, IB3, IP19, N92, T7, TP4, TP6	None	203	241	10 L	25 L	D	25, 52, 53
G	Polymerizing substance, liquid, temperature controlled, n.o.s.	4.1	UN3534	III	4.1	387, IB3, IP19, N92, T7, TP4, TP6	None	203	241	Forbidden	Forbidden	D	2, 25, 52, 53
G	Polymerizing substance, solid, stabilized, n.o.s.	4.1	UN3531	III	4.1	387, IB7, IP19, N92, T7, TP4, TP6, TP33	None	213	240	10 kg	25 kg	D	25, 52, 53
G	Polymerizing substance, solid, temperature controlled, n.o.s.	4.1	UN3533	III	4.1	387, IB7, IP19, N92, T7, TP4, TP6, TP33	None	213	240	Forbidden	Forbidden	D	2, 25, 52, 53
*			*			*			*			*	*
G	Water-reactive liquid, corrosive, n.o.s.	4.3	UN3129	I	4.3, 8	T14, TP2, TP7, TP13	None	201	243	Forbidden	1 L	D	13, 148
G				II	4.3, 8	IB1, T11, TP2, TP7	151	202	243	1 L	5 L	E	13, 85, 148
G				III	4.3, 8	IB2, T7, TP2, TP7	151	203	242	5 L	60 L	E	13, 85, 148
	*			*			*			*			*
G	Water-reactive liquid, n.o.s.	4.3	UN3148	I	4.3	T13, TP2, TP7, W31	None	201	244	Forbidden	1 L	E	13, 40, 148
G				II	4.3	T13, TP2, TP7, W31	151	201	244	Forbidden	1 L	E	13, 40, 148
G				III	4.3	IB2, T7, TP2, TP7, W31	151	203	242	5 L	60 L	E	13, 40, 148
	*		*		*		*		*		*		*

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* * * * *

■ 8. In § 172.102:

In paragraph (c)(1):

■ a. Revise special provisions 78, 156, and 387;

■ b. Add special provisions 396 and 398;

■ c. Remove and reserve special provision 421.

In paragraph (c)(2):

■ d. Revise special provision A54; and

■ e. Add special provisions A224 and A225.

In paragraph (c)(4):

■ f. In Table 2—IP Codes, revise special provision IP15 and add special provision IP22 in numerical order.

The additions and revisions read as follows:

§ 172.102 Special provisions.

* * * * *

(c) * * *

(1) * * *

78 Mixtures of nitrogen and oxygen containing not less than 19.5% and not more than 23.5% oxygen by volume may be transported under this entry when no other oxidizing gases are present. A Division 5.1 subsidiary hazard label is not required for any concentrations within this limit. Compressed air containing greater than 23.5% oxygen by volume must be shipped using the description

''Compressed gas, oxidizing, n.o.s., UN3156.''

* * * * *

156 Asbestos that is immersed or fixed in a natural or artificial binder material, such as cement, plastic, asphalt, resins, or mineral ore, or contained in manufactured products, is not subject to the requirements of this subchapter, except that when transported by air, an indication of compliance with this special provision must be provided by including the words ''not restricted'' on a shipping paper, such as an air waybill accompanying the shipment.

* * * * *

387 When materials are stabilized by temperature control, the provisions of § 173.21(f) of this subchapter apply. When chemical stabilization is employed, the person offering the material for transport shall ensure that the level of stabilization is sufficient to prevent the material as packaged from dangerous polymerization at 50 °C (122 °F). If chemical stabilization becomes ineffective at lower temperatures within the anticipated duration of transport, temperature control is required in which case transportation is forbidden by aircraft. In making this determination factors to be taken into consideration include, but are not limited to, the capacity and geometry of the packaging and the effect of any insulation present; the temperature of the material when offered for transport; the duration of the journey and the ambient temperature conditions typically encountered in the journey (considering also the season of year); the effectiveness and other properties of the stabilizer employed; applicable operational controls imposed by regulation (*e.g.,* requirements to protect from sources of heat, including other cargo carried at a temperature above ambient); and any other relevant factors.

* * * * *

396 Large and robust articles may be transported with connected gas cylinders with the valves open regardless of § 173.24(b)(1), provided:

a. The gas cylinders contain nitrogen of UN 1066 or compressed gas of UN 1956 or compressed air of UN1002;

b. The gas cylinders are connected to the article through pressure regulators and fixed piping in such a way that the pressure of the gas (gauge pressure) in the article does not exceed 35 kPa (0.35 bar);

c. The gas cylinders are properly secured so that they cannot shift in relation to the article and are fitted with strong and pressure resistant hoses and pipes;

d. The gas cylinders, pressure regulators, piping, and other components are protected from damage and impacts during transport by wooden crates or other suitable means;

e. The shipping paper must include the following statement: ''Transport in accordance with special provision 396''; and

f. Cargo transport units containing articles transported with cylinders with open valves containing a gas presenting a risk of asphyxiation are well ventilated.

398 This entry applies to 1-butylene, cis-2-butylene and trans-2-butylene, and mixtures of butylenes. For isobutylene, see UN 1055.

* * * * *

421 [Reserved]

* * * * *

(2) * * *

A54 Irrespective of the quantity limits in Column 9B of the § 172.101 table, a lithium battery, including a lithium battery packed with, or contained in, equipment that otherwise meets the applicable requirements of § 173.185, may have a mass exceeding 35 kg if approved by the Associate Administrator prior to shipment. When approved by the Associate Administrator and shipped in accordance with this special provision, the special provision must be noted on the shipping paper.

* * * * *

A224 UN3548, Articles containing miscellaneous dangerous goods, n.o.s. may be transported on passenger and cargo-only aircraft, irrespective of the indication of ''forbidden'' in Columns (9A) and (9B) of the Hazardous Materials Table, provided: (a) with the exception of lithium cells or batteries that comply with § 173.185(c), as applicable, the only hazardous materials contained in the article is an environmentally hazardous substance; (b) the articles are packed in accordance with § 173.232; and (c) reference to Special Provision A224 is made on the shipping paper.

A225 UN3538, Articles containing non-flammable, non-toxic gas, n.o.s. may be transported on passenger and cargo-only aircraft irrespective of the indication of ''forbidden'' in Columns (9A) and (9B) of the Hazardous Materials Table, provided: (a) with the exception of lithium cells or batteries that comply with § 173.185(c), as applicable, the only dangerous good contained in the article is a Division 2.2 gas without a subsidiary hazard, but excluding refrigerated liquefied gases and gases forbidden for transport on passenger aircraft; (b) the articles are packed in accordance with § 173.232(h); and (c) reference to Special Provision A225 is made on the shipping paper.

* * * * *

(4) * * *

IP15 For UN2031 with more than 55% nitric acid, the permitted use of rigid plastic IBCs, and the inner receptacle of composite IBCs with rigid plastics, shall be two years from their date of manufacture.

* * * * *

IP22 UN3550 may be transported in flexible IBCs (13H3 or 13H4) with sift-proof liners to prevent any egress of dust during transport.

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

■ 9. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.81, 1.96 and 1.97.

■ 10. In § 173.4b, revise paragraph (b)(1) to read as follows:

§ 173.4b De minimis exceptions.

* * * * *

(b) * * *

(1) The specimens are:

(i) Wrapped in a paper towel or cheesecloth moistened with alcohol, an alcohol solution, or a formaldehyde solution and placed in a plastic bag that is heat-sealed. Any free liquid in the bag must not exceed 30 mL; or

(ii) Placed in vials or other rigid containers with no more than 30 mL of alcohol, an alcohol solution, or a formaldehyde solution. The containers are placed in a plastic bag that is heat-sealed;

* * * * *

■ 11. In § 173.21, revise paragraphs (f) introductory text, (f)(1), and (f)(2) to read as follows:

§ 173.21 Forbidden materials and packages.

* * * * *

(f) A package containing a material which is likely to decompose with a self-accelerated decomposition temperature (SADT) or polymerize with a self-accelerated polymerization temperature (SAPT) of 50 °C (122 °F) or less, or 45 °C (113 °F) or less when offered for transportation in portable tanks, with an evolution of a dangerous quantity of heat or gas when decomposing or polymerizing, unless the material is stabilized or inhibited in a manner to preclude such evolution.

For organic peroxides, see paragraph (f)(2) of this section. The SADT and SAPT may be determined by any of the test methods described in Part II of the UN Manual of Tests and Criteria (IBR, *see* § 171.7 of this subchapter).

(1) A package meeting the criteria of paragraph (f) of this section may be required to be shipped under controlled temperature conditions. The control temperature and emergency temperature for a package shall be as specified in Table 1 in this paragraph based upon the SADT or SAPT of the material. The control temperature is the temperature above which a package of the material may not be offered for transportation or transported. The emergency temperature is the temperature at which, due to imminent danger, emergency measures must be initiated.

TABLE 1 TO PARAGRAPH (f)(1)—DERIVATION OF CONTROL AND EMERGENCY TEMPERATURE

Type of receptacle	SADT/SAPT [1]	Control temperatures	Emergency temperature
Single packagings and IBCs	SADT/SAPT ≤20 °C (68 °F)	20 °C (36 °F) below SADT/SAPT	10 °C (18 °F) below SADT/SAPT.
Single packagings and IBCs	20 °C (68 °F) <SADT/SAPT ≤35 °C (95 °F).	15 °C (27 °F) below SADT/SAPT	10 °C (18 °F) below SADT/SAPT.
Single packagings and IBCs	35 °C (95 °F) <SADT/SAPT ≤50 °C (122 °F).	10 °C (18 °F) below SADT/SAPT	5 °C (9 °F) below SADT/SAPT.
Single packagings and IBCs	50 °C (122 °F) <SADT/SAPT	(2)	(2)
Portable tanks	SADT/SAPT ≤45 °C (113 °F)	10 °C (18 °F) below SADT/SAPT	5 °C (9 °F) below SADT/SAPT.
Portable tanks	45 °C (113 °F) <SADT/SAPT	(2)	(2)

[1] Self-accelerating decomposition temperature or self-accelerating polymerization temperature.
[2] Temperature control not required.

(2) For hazardous materials listed in the Self-Reactive Materials Table in § 173.224(b), control and emergency temperatures, where required, are shown in Columns 5 and 6, respectively. For hazardous materials listed in the Organic Peroxide Table in § 173.225, control and emergency temperatures, where required, are shown in Columns 7a and 7b of the table, respectively. In addition, the following organic peroxides shall be subjected to temperature control during transport:

(i) Organic peroxides type B and C with a SADT ≤50°C;

(ii) Organic peroxides type D showing a medium effect when heated under confinement, as determined by test series E in Part II of the UN Manual of Tests and Criteria (IBR, *see* § 171.7 of this subchapter), with a SADT ≤50 °C or showing a low or no effect when heated under confinement with a SADT ≤45 °C; and

(iii) Organic peroxides types E and F with a SADT ≤45 °C.

* * * * *

■ 12. In § 173.27, revise paragraph (f)(2)(i)(D) to read as follows:

§ 173.27 General requirements for transportation by aircraft.

* * * * *

(f) * * *

(2) * * *

(i) * * *

(D) Divisions 4.1 (self-reactive and UN2555, UN2556, UN2557, or UN2907), 4.2 (spontaneously combustible) (primary or subsidiary risk), and 4.3 (dangerous when wet) (liquids);

* * * * *

§ 173.124 [Amended]

■ 13. In § 173.124, remove paragraph (a)(4)(iv).

■ 14. In § 173.137, revise the introductory text to read as follows:

§ 173.137 Class 8—Assignment of packing group.

The packing group of a Class 8 material is indicated in Column 5 of the table to § 172.101 (of this subchapter). When the table to § 172.101 provides more than one packing group for a Class 8 material, the packing group must be determined using data obtained from tests conducted in accordance with the OECD Guidelines for the Testing of Chemicals, Test No. 435, ''*In Vitro* Membrane Barrier Test Method for Skin Corrosion'' (IBR, *see* § 171.7 of this subchapter); or Test No. 404, ''Acute Dermal Irritation/Corrosion'' (IBR, *see* § 171.7 of this subchapter). Alternatively, a substance or mixture may be considered not corrosive to human skin for the purposes of this subchapter following testing in accordance with OECD Guideline for the Testing of Chemicals Test No. 430, ''*In Vitro* Skin Corrosion: Transcutaneous Electrical Resistance test (TER)'' (IBR, *see* § 171.7 of this subchapter); Test No. 431, ''*In Vitro* Skin Corrosion: Reconstructed Human Epidermis (RHE) Test Method'' (IBR, *see* § 171.7 of this subchapter); or Test No. 439, ''*In Vitro* Skin Irritation: Reconstructed Human Epidermis Test Method'' (IBR, *see* § 171.7 of this subchapter). However, if the substance or mixture is determined to be corrosive in accordance with Test No. 430 or Test No. 439, the material may be assigned to Packing Group I, or must be further tested using Test No. 435 or Test No. 404 to determine the packaging group assignment. If the results of Test No. 431 indicate that the substance or mixture is corrosive, but the test method does not clearly distinguish between assignment of Packing Groups II and III, the material must be assigned to Packing Group II unless further testing is performed. The packing group assignment using data obtained from tests conducted in accordance with OECD Guideline Test No. 404 must be as follows:

* * * * *

■ 15. In 173.151, revise paragraph (d) introductory text to read as follows:

§ 173.151 Exceptions for Class 4.

* * * * *

(d) *Limited quantities of Division 4.3.* Limited quantities of dangerous when wet solids or liquids (Division 4.3) in Packing Groups II and III are excepted from labeling requirements, unless the material is offered for transportation or transported by aircraft, and are excepted from the specification packaging requirements of this subchapter when packaged in combination packagings according to this paragraph. For transportation by aircraft, the package must also conform to applicable requirements of § 173.27 of this part (*e.g.,* authorized materials, inner packaging quantity limits, and closure securement), and only hazardous material authorized aboard passenger-carrying aircraft may be transported as a limited quantity. A limited quantity package that conforms to the provisions of this section is not subject to the shipping paper requirements of subpart C of part 172 of this subchapter, unless the material meets the definition of a hazardous substance, hazardous waste, or marine pollutant, or is offered for

transportation and transported by aircraft or vessel. In addition, shipments of limited quantities are not subject to subpart F (Placarding) of part 172 of this subchapter. Each package must conform to the packaging requirements of subpart B of this part and may not exceed 30 kg (66 pounds) gross weight. Except for transportation by aircraft, the following combination packagings are authorized:

* * * * *

■ 16. Revise § 173.167 to read as follows:

§ 173.167 ID8000 consumer commodities.

Packages prepared under the requirements of this section may be offered for transportation and transported by all modes.

(a) *Applicability.* This section applies to limited quantities of ''consumer commodity'' material. (See § 171.8 of this subchapter.) Materials eligible for transportation in accordance with this section are articles or substances of Class 2 (non-toxic aerosols only), Class 3 (Packing Group II and III only), Division 6.1 (Packing Group III only), UN3077, UN3082, UN3175, UN3334, and UN3335, provided such materials do not have a subsidiary risk and are authorized aboard a passenger-carrying aircraft. The outer packaging for the consumer commodity is not subject to the specification packaging requirements of this subchapter. Except as indicated in § 173.24(i), each completed package must conform to §§ 173.24 and 173.24a of this subchapter. Additionally, except for the pressure differential requirements in § 173.27(c), the requirements of § 173.27 do not apply to packages prepared in accordance with this section. As applicable, the following apply:

(1) *Inner and outer packaging quantity limits.*

(i) Non-toxic aerosols, as defined in § 171.8 of this subchapter and constructed in accordance with § 173.306 of this part, in non-refillable, non-metal containers not exceeding 120 mL (4 fluid ounces) each, or in non-refillable metal containers not exceeding 820 mL (28 fluid ounces) each, except that flammable aerosols may not exceed 500 mL (16.9 fluid ounces) each;

(ii) Liquids, in inner packagings not exceeding 500 mL (16.9 fluid ounces) each. Liquids must not completely fill an inner packaging at 55 °C;

(iii) Solids, in inner packagings not exceeding 500 g (1.0 pounds) each; or

(iv) Any combination thereof not to exceed 30 kg (66 pounds) gross weight as prepared for shipment.

(2) *Closures.* Friction-type closures must be secured by positive means. The body and closure of any packaging must be constructed so as to be able to adequately resist the effects of temperature and vibration occurring in conditions normally incident to air transportation. The closure device must be so designed that it is unlikely it can be incorrectly or incompletely closed.

(3) *Absorbent material.* Inner packagings must be tightly packaged in strong outer packagings. Absorbent and cushioning material must not react dangerously with the contents of inner packagings. For glass or earthenware inner packagings containing liquids of Class 3 or Division 6.1, sufficient absorbent material must be provided to absorb the entire contents of the largest inner packaging contained in the outer packaging. Absorbent material is not required if the glass or earthenware inner packagings are sufficiently protected as packaged for transport that it is unlikely a failure would occur and, if a failure did occur, that it would be unlikely that the contents would leak from the outer packaging.

(4) *Drop test capability.* Breakable inner packagings (*e.g.,* glass, earthenware, or brittle plastic) must be packaged to prevent failure under conditions normally incident to transport. Packages of consumer commodities, as prepared for transport, must be capable of withstanding a 1.2 meter drop on solid concrete in the position most likely to cause damage. In order to pass the test, the outer packaging must not exhibit any damage liable to affect safety during transport and there must be no leakage from the inner packaging(s).

(5) *Stack test capability.* Packages of consumer commodities must be capable of withstanding, without failure or leakage of any inner packaging and without any significant reduction in effectiveness, a force applied to the top surface, for a duration of 24 hours, equivalent to the total weight of identical packages if stacked to a height of 3.0 meters (including the test sample).

(6) *Hazard communication.* Packages prepared under the requirements of this section are to be marked as a limited quantity, in accordance with § 172.315(b), and labeled as a Class 9 article or substance, as appropriate, in accordance with subpart E of part 172 of this subchapter; and

(7) *Pressure differential capability.* Except for UN3082, inner packagings intended to contain liquids must be capable of meeting the pressure differential requirements (75 kPa) prescribed in § 173.27(c) of this part. The capability of a packaging to withstand an internal pressure without leakage that produces the specified pressure differential should be determined by successfully testing design samples or prototypes.

(b) *Highway, rail, and vessel hazard communication exceptions.* Packages prepared in accordance with the requirements of this section:

(1) Are excepted from the labeling requirements in paragraph (a)(6) when transported by highway, rail, and vessel; and

(2) Are excepted from the shipping papers requirements in Part 172, Subpart C when transported by highway and rail.

■ 17. In § 173.185:

■ a. Revise paragraphs (a)(3) introductory text and (a)(3)(x);

■ b. Add paragraph (a)(5);

■ c. Revise paragraphs (b)(3)(iii)(A) and (B);

■ d. Add paragraph (b)(3)(iii)(C);

■ e. Revise paragraphs (b)(4)(ii) and (iii);

■ f. Add paragraph (b)(4)(iv);

■ g. Revise paragraphs (b)(5), (c)(3) through (5), and (e)(5) through (7).

The amendments read as follows:

§ 173.185 Lithium cell and batteries.

* * * * *

(a) * * *

(3) Each manufacturer and subsequent distributor of lithium cells or batteries, except for button cells installed in equipment (including circuit boards), manufactured on or after January 1, 2008, must make a test summary available. The test summary must include the following elements:

* * * * *

(x) Name and title of a responsible person as an indication of the validity of information provided.

* * * * *

(5) Beginning May 10, 2024, each lithium ion battery must be marked with the Watt-hour rating on the outside case.

* * * * *

(b) * * *

(3) * * *

(iii) * * *

(A) Be placed in inner packagings that completely enclose the cell or battery, then placed in a packaging of a type that meets the Packing Group II performance requirements as specified in paragraph (b)(3)(ii) of this section, and then placed with the equipment in a strong, rigid outer packaging; or

(B) Be placed in inner packagings that completely enclose the cell or battery, then placed with the equipment in a packaging of a type that meets the Packing Group II performance requirements as specified in paragraph (b)(3)(ii) of this section.

(C) For transportation by aircraft, the number of cells or batteries in each

package is limited to the minimum number required to power the piece of equipment, plus two spare sets. A set of cells or batteries is the number of individual cells or batteries that are required to power each piece of equipment.

(4) * * *

(ii) Equipment must be secured to prevent damage caused by shifting within the outer packaging and be packed so as to prevent accidental operation during transport;

(iii) Any spare lithium cells or batteries packed with the equipment must be packaged in accordance with paragraph (b)(3) of this section; and

(iv) For transportation by aircraft, where multiple pieces of equipment are packed in the same outer packaging, each piece of equipment must be packed to prevent contact with other equipment.

(5) Lithium cells or batteries that weigh 12 kg (26.5 pounds) or more and have a strong, impact-resistant outer casing, may be packed in strong outer packagings; in protective enclosures (for example, in fully enclosed or wooden slatted crates); or on pallets or other handling devices, instead of packages meeting the UN performance packaging requirements in paragraphs (b)(3)(ii) and (b)(3)(iii) of this section. Cells and batteries must be secured to prevent inadvertent shifting, and the terminals may not support the weight of other superimposed elements. Cells and batteries packaged in accordance with this paragraph may be transported by cargo-only aircraft if approved by the Associate Administrator.

* * * * *

(c) * * *

(3) *Lithium battery mark.* Each package must display the lithium battery mark except when a package contains only button cell batteries contained in equipment (including circuit boards), or when a consignment contains two packages or fewer where each package contains not more than four lithium cells or two lithium batteries contained in equipment.

(i) The mark must indicate the UN number: ''UN3090'' for lithium metal cells or batteries, or ''UN3480'' for lithium ion cells or batteries. Where the lithium cells or batteries are contained in, or packed with, equipment, the UN number ''UN3091'' or ''UN3481,'' as appropriate, must be indicated. Where a package contains lithium cells or batteries assigned to different UN numbers, all applicable UN numbers must be indicated on one or more marks. The package must be of such size that there is adequate space to affix the mark on one side without the mark being folded.

Figure 1 to paragraph (c)(3)(i) introductory text

(A) The mark must be in the form of a rectangle or a square with hatched edging. The mark must be not less than 100 mm (3.9 inches) wide by 100 mm (3.9 inches) high, and the minimum width of the hatching must be 5 mm (0.2 inches), except marks of 100 mm (3.9 inches) wide by 70 mm (2.8 inches) high may be used on a package containing lithium batteries when the package is too small for the larger mark;

(B) The symbols and letters must be black on white or suitable contrasting background and the hatching must be red;

(C) The ''*'' must be replaced by the appropriate UN number(s); and

(D) Where dimensions are not specified, all features shall be in approximate proportion to those shown.

(ii) The lithium battery mark, in conformance with the requirements of this paragraph, in effect on May 9, 2024, may continue to be used until December 31, 2026.

(iii) When packages are placed in an overpack, the lithium battery mark shall either be clearly visible through the overpack or be reproduced on the outside of the overpack, and the overpack shall be marked with the word ''OVERPACK.'' The lettering of the ''OVERPACK'' mark shall be at least 12 mm (0.47 inches) high.

(4) *Air transportation for smaller lithium cells or batteries packed with, or contained in, equipment.*

(i) The number of cells or batteries in each package is limited to the minimum number required to power the piece of equipment, plus two spare sets, and the total net quantity (mass) of the lithium cells or batteries in the completed package must not exceed 5 kg. A set of cells or batteries is the number of

individual cells or batteries that are required to power each piece of equipment.

(ii) When packages are placed in an overpack, the packages must be secured within the overpack, and the intended function of each package must not be impaired by the overpack.

(iii) Each shipment with packages required to display the paragraph (c)(3)(i) lithium battery mark must include an indication on the air waybill of compliance with this paragraph (c)(4) (or the applicable ICAO Technical Instructions Packing Instruction), when an air waybill is used.

(iv) Each person who prepares a package for transport containing lithium cells or batteries, packed with, or contained in, equipment in accordance with the conditions and limitations of this paragraph (c)(4), must receive instruction on these conditions and limitations, corresponding to their functions.

(5) *Air transportation for smaller lithium cells and batteries.*

(i) A package prepared in accordance with the size limits in paragraph (c)(1) is subject to all applicable requirements of this subchapter, except that a package containing no more than 2.5 kg lithium metal cells or batteries, or 10 kg lithium ion cells or batteries, is not subject to the UN performance packaging requirements in paragraph (b)(3)(ii) of this section, when the package displays both the lithium battery mark in paragraph (c)(3)(i) and the Class 9 Lithium Battery label specified in § 172.447 of this subchapter. This paragraph does not apply to batteries or cells packed with, or contained in, equipment.

(ii) Each package must be capable of withstanding, without damage to the cells or batteries contained therein and without any reduction of effectiveness, a force applied to the top surface equivalent to the total weight of identical packages stacked to a height of 3 meters (including the test sample) for a duration of 24 hours.

* * * * *

(e) * * *

(5) Lithium batteries, including lithium batteries contained in equipment, that weigh 12 kg (26.5 pounds) or more and have a strong, impact-resistant outer casing, may be packed in strong outer packagings, in protective enclosures (for example, in fully enclosed or wooden slatted crates), or on pallets or other handling devices, instead of packages meeting the UN performance packaging requirements in paragraphs (b)(3)(ii) and (iii) of this section. The cell or battery must be secured to prevent inadvertent shifting, and the terminals may not support the weight of other superimposed elements;

(6) Irrespective of the limit specified in Column (9B) of the § 172.101 Hazardous Materials Table, the cell or battery prepared for transport in accordance with this paragraph may have a mass exceeding 35 kg gross weight when transported by cargo-only aircraft;

(7) Cells or batteries packaged in accordance with this paragraph are not permitted for transportation by passenger-carrying aircraft, and may be transported by cargo-only aircraft only if approved by the Associate Administrator prior to transportation; and

* * * * *

■ 18. In § 173.224,

■ a. Revise paragraph (b)(4);

■ b. Designate the table immediately following paragraph (b)(7) as table 1 to paragraph (b); and

■ c. Revise newly designated table 1 to paragraph (b).

The revisions read as follows:

§ 173.224 Packaging and control and emergency temperatures for self-reactive materials.

* * * * *

(b) * * *

(4) *Packing method.* Column 4 specifies the highest packing method that is authorized for the self-reactive material. A packing method corresponding to a smaller package size may be used, but a packing method corresponding to a larger package size may not be used. The Table of Packing Methods in § 173.225(d) defines the packing methods. Bulk packagings for Type F organic peroxides are authorized by § 173.225(f) for IBCs and § 173.225(h) for bulk packagings other than IBCs. The formulations not listed in this section but listed in § 173.225(e) for IBCs and in § 173.225(g) for portable tanks may also be transported packed in accordance with packing method OP8, with the same control and emergency temperatures, if applicable. Additional bulk packagings are authorized if approved by the Associate Administrator.

* * * * *

TABLE 1 TO PARAGRAPH (b)—SELF-REACTIVE MATERIALS TABLE

Self-reactive substance	Identification No.	Concentration—(%)	Packing method	Control temperature—(°C)	Emergency temperature	Notes
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Acetone-pyrogallol copolymer 2-diazo-1-naphthol-5-sulphonate	3228	100	OP8			
Azodicarbonamide formulation type B, temperature controlled	3232	<100	OP5			1
Azodicarbonamide formulation type C	3224	<100	OP6			
Azodicarbonamide formulation type C, temperature controlled	3234	<100	OP6			1
Azodicarbonamide formulation type D	3226	<100	OP7			
Azodicarbonamide formulation type D, temperature controlled	3236	<100	OP7			1
2,2′-Azodi(2,4-dimethyl-4-methoxyvaleronitrile)	3236	100	OP7	−5	+5	
2,2′-Azodi(2,4-dimethylvaleronitrile)	3236	100	OP7	+10	+15	
2,2′-Azodi(ethyl 2-methylpropionate)	3235	100	OP7	+20	+25	
1,1-Azodi(hexahydrobenzonitrile)	3226	100	OP7			
2,2-Azodi(isobutyronitrile)	3234	100	OP6	+40	+45	
2,2′-Azodi(isobutyronitrile) as a water-based paste	3224	≤50	OP6			
2,2-Azodi(2-methylbutyronitrile)	3236	100	OP7	+35	+40	
Benzene-1,3-disulphonylhydrazide, as a paste	3226	52	OP7			
Benzene sulphohydrazide	3226	100	OP7			
4-(Benzyl(ethyl)amino)-3-ethoxybenzenediazonium zinc chloride	3226	100	OP7			
4-(Benzyl(methyl)amino)-3-ethoxybenzenediazonium zinc chloride	3236	100	OP7	+40	+45	
3-Chloro-4-diethylaminobenzenediazonium zinc chloride	3226	100	OP7			
2-Diazo-1-Naphthol sulphonic acid ester mixture	3226	<100	OP7			4
2-Diazo-1-Naphthol-4-sulphonyl chloride	3222	100	OP5			
2-Diazo-1-Naphthol-5-sulphonyl chloride	3222	100	OP5			
2,5-Dibutoxy-4-(4-morpholinyl)-Benzenediazonium, tetrachlorozincate (2:1).	3228	100	OP8			
2,5-Diethoxy-4-morpholinobenzenediazonium zinc chloride	3236	67–100	OP7	+35	+40	

TABLE 1 TO PARAGRAPH (b)—SELF-REACTIVE MATERIALS TABLE—Continued

Self-reactive substance (1)	Identification No. (2)	Concentration—(%) (3)	Packing method (4)	Control temperature—(°C) (5)	Emergency temperature (6)	Notes (7)
2,5-Diethoxy-4-morpholinobenzenediazonium zinc chloride	3236	66	OP7	+40	+45	
2,5-Diethoxy-4-morpholinobenzenediazonium tetrafluoroborate	3236	100	OP7	+30	+35	
2,5-Diethoxy-4-(phenylsulphonyl)benzenediazonium zinc chloride	3236	67	OP7	+40	+45	
2,5-Diethoxy-4-(4-morpholinyl)-benzenediazonium sulphate	3226	100	OP7			
Diethylene glycol bis(allyl carbonate) +Diisopropylperoxydicarbonate	3237	≥88 + ≤12	OP8	−10	0	
2,5-Dimethoxy-4-(4-methylphenylsulphony)benzenediazonium zinc chloride.	3236	79	OP7	+40	+45	
4-Dimethylamino-6-(2-dimethylaminoethoxy)toluene-2-diazonium zinc chloride.	3236	100	OP7	+40	+45	
4-(Dimethylamino)-benzenediazonium trichlorozincate (-1)	3228	100	OP8			
N,N′-Dinitroso-N, N′-dimethyl-terephthalamide, as a paste	3224	72	OP6			
N,N′-Dinitrosopentamethylenetetramine	3224	82	OP6			2
Diphenyloxide-4,4′-disulphohydrazide	3226	100	OP7			
Diphenyloxide-4,4′-disulphonylhydrazide	3226	100	OP7			
4-Dipropylaminobenzenediazonium zinc chloride	3226	100	OP7			
2-(N,N-Ethoxycarbonylphenylamino)-3-methoxy-4-(N-methyl-N-cyclohexylamino)benzenediazonium zinc chloride.	3236	63–92	OP7	+40	+45	
2-(N,N-Ethoxycarbonylphenylamino)-3-methoxy-4-(N-methyl-N-cyclohexylamino)benzenediazonium zinc chloride.	3236	62	OP7	+35	+40	
N-Formyl-2-(nitromethylene)-1,3-perhydrothiazine	3236	100	OP7	+45	+50	
2-(2-Hydroxyethoxy)-1-(pyrrolidin-1-yl)benzene-4-diazonium zinc chloride.	3236	100	OP7	+45	+50	
3-(2-Hydroxyethoxy)-4-(pyrrolidin-1-yl)benzenediazonium zinc chloride.	3236	100	OP7	+40	+45	
7-Methoxy-5-methyl-benzothiophen-2-yl boronic acid''	3230	88–100				6
2-(N,N-Methylaminoethylcarbonyl)-4-(3,4-dimethyl-phenylsulphonyl) benzenediazonium hydrogen sulphate.	3236	96	OP7	+45	+50	
4-Methylbenzenesulphonylhydrazide	3226	100	OP7			
3-Methyl-4-(pyrrolidin-1-yl)benzenediazonium tetrafluoroborate	3234	95	OP6	+45	+50	
4-Nitrosophenol	3236	100	OP7	+35	+40	
Phosphorothioic acid, O-[(cyanophenyl methylene) azanyl] O,O-diethyl ester.	3227	82–91 (Z isomer)	OP8			5
Self-reactive liquid, sample	3223		OP2			3
Self-reactive liquid, sample, temperature control	3233		OP2			3
Self-reactive solid, sample	3224		OP2			3
Self-reactive solid, sample, temperature control	3234		OP2			3
Sodium 2-diazo-1-naphthol-4-sulphonate	3226	100	OP7			
Sodium 2-diazo-1-naphthol-5-sulphonate	3226	100	OP7			
Tetramine palladium (II) nitrate	3234	100	OP6	+30	+35	

Notes:
1. The emergency and control temperatures must be determined in accordance with § 173.21(f).
2. With a compatible diluent having a boiling point of not less than 150 °C.
3. Samples may only be offered for transportation under the provisions of paragraph (c)(3) of this section.
4. This entry applies to mixtures of esters of 2-diazo-1-naphthol-4-sulphonic acid and 2-diazo-1-naphthol-5-sulphonic acid.
5. This entry applies to the technical mixture in n-butanol within the specified concentration limits of the (Z) isomer.
6. The technical compound with the specified concentration limits may contain up to 12% water and up to 1% organic impurities.

* * * * *

■ 19. In § 173.225:
■ a. Revise table 1 to paragraph (c);
■ b. Designate the tables immediately following paragraph (d) and immediately following paragraph (g) as table 2 to paragraph (d) and table 4 to paragraph (g), respectively; and
■ c. Revise newly designated table 4 to paragraph (g).

§ 173.225 Packaging requirements and other provisions for organic peroxides.

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(c) * * *

TABLE 1 TO PARAGRAPH (c)—ORGANIC PEROXIDE TABLE

Technical name (1)	ID No. (2)	Concentration (mass %) (3)	Diluent (mass %) A (4a)	Diluent (mass %) B (4b)	Diluent (mass %) I (4c)	Water (mass %) (5)	Packing method (6)	Temperature (°C) Control (7a)	Temperature (°C) Emergency (7b)	Notes (8)
Acetyl acetone peroxide	UN3105	≤42	≥48			≥8	OP7			2
Acetyl acetone peroxide	UN3107	≤35				≥8	OP8			32
Acetyl acetone peroxide [as a paste]	UN3106	≤32					OP7			21
Acetyl cyclohexanesulfonyl peroxide	UN3112	≤82				≥12	OP4	−10	0	
Acetyl cyclohexanesulfonyl peroxide	UN3115	≤32		≥68			OP7	−10	0	
tert-Amyl hydroperoxide	UN3107	≤88	≥6			≥6	OP8			
tert-Amyl peroxyacetate	UN3105	≤62	≥38				OP7			
tert-Amyl peroxybenzoate	UN3103	≤100					OP5			
tert-Amyl peroxy-2-ethylhexanoate	UN3115	≤100					OP7	20	25	
tert-Amyl peroxy-2-ethylhexyl carbonate	UN3105	≤100					OP7			
tert-Amyl peroxy isopropyl carbonate	UN3103	≤77	≥23				OP5			
tert-Amyl peroxyneodecanoate	UN3115	≤77		≥23			OP7	0	10	
tert-Amyl peroxyneodecanoate	UN3119	≤47	≥53				OP8	0	10	

TABLE 1 TO PARAGRAPH (c)—ORGANIC PEROXIDE TABLE—Continued

Technical name	ID No.	Concentration (mass %)	Diluent (mass %)			Water (mass %)	Packing method	Temperature (°C)		Notes
			A	B	I			Control	Emergency	
(1)	(2)	(3)	(4a)	(4b)	(4c)	(5)	(6)	(7a)	(7b)	(8)
tert-Amyl peroxypivalate	UN3113	≤77		≥23			OP5	10	15	
tert-Amyl peroxypivalate	UN3119	≤32	≥68				OP8	10	15	
tert-Amyl peroxy-3,5,5-trimethylhexanoate	UN3105	≤100					OP7			
tert-Butyl cumyl peroxide	UN3109	>42–100					OP8			9
tert-Butyl cumyl peroxide	UN3108	≤52			≥48		OP8			9
n-Butyl-4,4-di-(tert-butylperoxy)valerate	UN3103	>52–100					OP5			
n-Butyl-4,4-di-(tert-butylperoxy)valerate	UN3108	≤52			≥48		OP8			
tert-Butyl hydroperoxide	UN3103	>79–90				≥10	OP5			13
tert-Butyl hydroperoxide	UN3105	≤80	≥20				OP7			4, 13
tert-Butyl hydroperoxide	UN3107	≤79				>14	OP8			13, 16
tert-Butyl hydroperoxide	UN3109	≤72				≥28	OP8			13
tert-Butyl hydroperoxide [and] Di-tert-butylperoxide.	UN3103	<82 + >9				≥7	OP5			13
tert-Butyl monoperoxymaleate	UN3102	>52–100					OP5			
tert-Butyl monoperoxymaleate	UN3103	≤52	≥48				OP6			
tert-Butyl monoperoxymaleate	UN3108	≤52			≥48		OP8			
tert-Butyl monoperoxymaleate [as a paste]	UN3108	≤52					OP8			
tert-Butyl peroxyacetate	UN3101	>52–77	≥23				OP5			
tert-Butyl peroxyacetate	UN3103	>32–52	≥48				OP6			
tert-Butyl peroxyacetate	UN3109	≤32		≥68			OP8			
tert-Butyl peroxybenzoate	UN3103	>77–100					OP5			
tert-Butyl peroxybenzoate	UN3105	>52–77	≥23				OP7			1
tert-Butyl peroxybenzoate	UN3106	≤52			≥48		OP7			
tert-Butyl peroxybenzoate	UN3109	≤32	≥68				OP8			
tert-Butyl peroxybutyl fumarate	UN3105	≤52	≥48				OP7			
tert-Butyl peroxycrotonate	UN3105	≤77	≥23				OP7			
tert-Butyl peroxydiethylacetate	UN3113	≤100					OP5	20	25	
tert-Butyl peroxy-2-ethylhexanoate	UN3113	>52–100					OP6	20	25	
tert-Butyl peroxy-2-ethylhexanoate	UN3117	>32–52		≥48			OP8	30	35	
tert-Butyl peroxy-2-ethylhexanoate	UN3118	≤52			≥48		OP8	20	25	
tert-Butyl peroxy-2-ethylhexanoate	UN3119	≤32		≥68			OP8	40	45	
tert-Butyl peroxy-2-ethylhexanoate [and] 2,2-di-(tert-Butylperoxy)butane.	UN3106	≤12 + ≤14	≥14		≥60		OP7			
tert-Butyl peroxy-2-ethylhexanoate [and] 2,2-di-(tert-Butylperoxy)butane.	UN3115	≤31 + ≤36		≥33			OP7	35	40	
tert-Butyl peroxy-2-ethylhexylcarbonate	UN3105	≤100					OP7			
tert-Butyl peroxyisobutyrate	UN3111	>52–77		≥23			OP5	15	20	
tert-Butyl peroxyisobutyrate	UN3115	≤52		≥48			OP7	15	20	
tert-Butylperoxy isopropylcarbonate	UN3103	≤77	≥23				OP5			
tert-Butylperoxy isopropylcarbonate	UN3105	≤62		≥38			OP7			
1-(2-tert-Butylperoxy isopropyl)-3-isopropenylbenzene.	UN3105	≤77	≥23				OP7			
1-(2-tert-Butylperoxy isopropyl)-3-isopropenylbenzene.	UN3108	≤42			≥58		OP8			
tert-Butyl peroxy-2-methylbenzoate	UN3103	≤100					OP5			
tert-Butyl peroxyneodecanoate	UN3115	>77–100					OP7	−5	5	
tert-Butyl peroxyneodecanoate	UN3115	≤77		≥23			OP7	0	10	
tert-Butyl peroxyneodecanoate [as a stable dispersion in water].	UN3119	≤52					OP8	0	10	
tert-Butyl peroxyneodecanoate [as a stable dispersion in water (frozen)].	UN3118	≤42					OP8	0	10	
tert-Butyl peroxyneodecanoate	UN3119	≤32	≥68				OP8	0	10	
tert-Butyl peroxyneoheptanoate	UN3115	≤77	≥23				OP7	0	10	
tert-Butyl peroxyneoheptanoate [as a stable dispersion in water].	UN3117	≤42					OP8	0	10	
tert-Butyl peroxypivalate	UN3113	>67–77	≥23				OP5	0	10	
tert-Butyl peroxypivalate	UN3115	>27–67		≥33			OP7	0	10	
tert-Butyl peroxypivalate	UN3119	≤27		≥73			OP8	30	35	
tert-Butylperoxy stearylcarbonate	UN3106	≤100					OP7			
tert-Butyl peroxy-3,5,5-trimethylhexanoate	UN3105	>37–100					OP7			
tert-Butyl peroxy-3,5,5-trimethlyhexanoate	UN3106	≤42			≥58		OP7			
tert-Butyl peroxy-3,5,5-trimethylhexanoate	UN3109	≤37		≥63			OP8			
3-Chloroperoxybenzoic acid	UN3102	>57–86			≥14		OP1			
3-Chloroperoxybenzoic acid	UN3106	≤57			≥3	≥40	OP7			
3-Chloroperoxybenzoic acid	UN3106	≤77			≥6	≥17	OP7			
Cumyl hydroperoxide	UN3107	>90–98	≤10				OP8			13
Cumyl hydroperoxide	UN3109	≤90	≥10				OP8			13, 15
Cumyl peroxyneodecanoate	UN3115	≤87	≥13				OP7	−10	0	
Cumyl peroxyneodecanoate	UN3115	≤77		≥23			OP7	−10	0	
Cumyl peroxyneodecanoate [as a stable dispersion in water].	UN3119	≤52					OP8	−10	0	
Cumyl peroxyneoheptanoate	UN3115	≤77	≥23				OP7	−10	0	
Cumyl peroxypivalate	UN3115	≤77		≥23			OP7	−5	5	
Cyclohexanone peroxide(s)	UN3104	≤91				≥9	OP6			13
Cyclohexanone peroxide(s)	UN3105	≤72	≥28				OP7			5
Cyclohexanone peroxide(s) [as a paste]	UN3106	≤72					OP7			5, 21
Cyclohexanone peroxide(s)	Exempt	≤32		>68			Exempt			29

TABLE 1 TO PARAGRAPH (c)—ORGANIC PEROXIDE TABLE—Continued

Technical name	ID No.	Concentration (mass %)	Diluent (mass %)			Water (mass %)	Packing method	Temperature (°C)		Notes
			A	B	I			Control	Emergency	
(1)	(2)	(3)	(4a)	(4b)	(4c)	(5)	(6)	(7a)	(7b)	(8)
Diacetone alcohol peroxides	UN3115	≤57		≥26		≥8	OP7	40	45	5
Diacetyl peroxide	UN3115	≤27		≥73			OP7	20	25	8, 13
Di-tert-amyl peroxide	UN3107	≤100					OP8			
([3R- (3R, 5aS, 6S, 8aS, 9R, 10R, 12S, 12aR**)]-Decahydro-10-methoxy-3, 6, 9-trimethyl-3, 12-epoxy-12H-pyrano [4, 3- j]-1, 2-benzodioxepin).	UN3106	≤100					OP7			
2,2-Di-(tert-amylperoxy)-butane	UN3105	≤57	≥43				OP7			
1,1-Di-(tert-amylperoxy)cyclohexane	UN3103	≤82	≥18				OP6			
Dibenzoyl peroxide	UN3102	>52–100			≤48		OP2			3
Dibenzoyl peroxide	UN3102	>77–94				≥6	OP4			3
Dibenzoyl peroxide	UN3104	≤77				≥23	OP6			
Dibenzoyl peroxide	UN3106	≤62			≥28	≥10	OP7			
Dibenzoyl peroxide [as a paste]	UN3106	>52–62					OP7			21
Dibenzoyl peroxide	UN3106	>35–52			≥48		OP7			
Dibenzoyl peroxide	UN3107	>36–42	≥18			≤40	OP8			
Dibenzoyl peroxide [as a paste]	UN3108	≤56.5				≥15	OP8			
Dibenzoyl peroxide [as a paste]	UN3108	≤52					OP8			21
Dibenzoyl peroxide [as a stable dispersion in water].	UN3109	≤42					OP8			
Dibenzoyl peroxide	Exempt	≤35			≥65		Exempt			29
Di-(4-tert-butylcyclohexyl)peroxydicarbonate	UN3114	≤100					OP6	30	35	
Di-(4-tert-butylcyclohexyl)peroxydicarbonate [as a stable dispersion in water].	UN3119	≤42					OP8	30	35	
Di-(4-tert-butylcyclohexyl)peroxydicarbonate [as a paste].	UN3118	≤42					OP8	35	40	
Di-tert-butyl peroxide	UN3107	>52–100					OP8			
Di-tert-butyl peroxide	UN3109	≤52		≥48			OP8			24
Di-tert-butyl peroxyazelate	UN3105	≤52	≥48				OP7			
2,2-Di-(tert-butylperoxy)butane	UN3103	≤52	≥48				OP6			
1,6-Di-(tert-butylperoxycarbonyloxy)hexane	UN3103	≤72	≥28				OP5			
1,1-Di-(tert-butylperoxy)cyclohexane	UN3101	>80–100					OP5			
1,1-Di-(tert-butylperoxy)cyclohexane	UN3103	>52–80	≥20				OP5			
1,1-Di-(tert-butylperoxy)-cyclohexane	UN3103	≤72		≥28			OP5			30
1,1-Di-(tert-butylperoxy)cyclohexane	UN3105	>42–52	≥48				OP7			
1,1-Di-(tert-butylperoxy)cyclohexane	UN3106	≤42	≥13		≥45		OP7			
1,1-Di-(tert-butylperoxy)cyclohexane	UN3107	≤27	≥25				OP8			22
1,1-Di-(tert-butylperoxy)cyclohexane	UN3109	≤42	≥58				OP8			
1,1-Di-(tert-Butylperoxy) cyclohexane	UN3109	≤37	≥63				OP8			
1,1-Di-(tert-butylperoxy)cyclohexane	UN3109	≤25	≥25	≥50			OP8			
1,1-Di-(tert-butylperoxy)cyclohexane	UN3109	≤13	≥13	≥74			OP8			
1,1-Di-(tert-butylperoxy)cyclohexane + tert-Butyl peroxy-2-ethylhexanoate.	UN3105	≤43+≤16	≥41				OP7			
Di-n-butyl peroxydicarbonate	UN3115	>27–52		≥48			OP7	−15	−5	
Di-n-butyl peroxydicarbonate	UN3117	≤27		≥73			OP8	−10	0	
Di-n-butyl peroxydicarbonate [as a stable dispersion in water (frozen)].	UN3118	≤42					OP8	−15	−5	
Di-sec-butyl peroxydicarbonate	UN3113	>52–100					OP4	−20	−10	6
Di-sec-butyl peroxydicarbonate	UN3115	≤52		≥48			OP7	−15	−5	
Di-(tert-butylperoxyisopropyl) benzene(s)	UN3106	>42–100			≤57		OP7			1, 9
Di-(tert-butylperoxyisopropyl) benzene(s)	Exempt	≤42			≥58		Exempt			
Di-(tert-butylperoxy)phthalate	UN3105	>42–52	≥48				OP7			
Di-(tert-butylperoxy)phthalate [as a paste]	UN3106	≤52					OP7			21
Di-(tert-butylperoxy)phthalate	UN3107	≤42	≥58				OP8			
2,2-Di-(tert-butylperoxy)propane	UN3105	≤52	≥48				OP7			
2,2-Di-(tert-butylperoxy)propane	UN3106	≤42	≥13		≥45		OP7			
1,1-Di-(tert-butylperoxy)-3,3,5-trimethylcyclohexane.	UN3101	>90–100					OP5			
1,1-Di-(tert-butylperoxy)-3,3,5-trimethylcyclohexane.	UN3103	>57–90	≥10				OP5			
1,1-Di-(tert-butylperoxy)-3,3,5-trimethylcyclohexane.	UN3103	≤77		≥23			OP5			
1,1-Di-(tert-butylperoxy)-3,3,5-trimethylcyclohexane.	UN3103	≤90		≥10			OP5			30
1,1-Di-(tert-butylperoxy)-3,3,5-trimethylcyclohexane.	UN3110	≤57			≥43		OP8			
1,1-Di-(tert-butylperoxy)-3,3,5-trimethylcyclohexane.	UN3107	≤57	≥43				OP8			
1,1-Di-(tert-butylperoxy)-3,3,5-trimethylcyclohexane.	UN3107	≤32	≥26	≥42			OP8			
Dicetyl peroxydicarbonate	UN3120	≤100					OP8	30	35	
Dicetyl peroxydicarbonate [as a stable dispersion in water].	UN3119	≤42					OP8	30	35	
Di-4-chlorobenzoyl peroxide	UN3102	≤77				≥23	OP5			
Di-4-chlorobenzoyl peroxide	Exempt	≤32			≥68		Exempt			29
Di-2,4-dichlorobenzoyl peroxide [as a paste]	UN3118	≤52					OP8	20	25	
Di-4-chlorobenzoyl peroxide [as a paste]	UN3106	≤52					OP7			21

TABLE 1 TO PARAGRAPH (c)—ORGANIC PEROXIDE TABLE—Continued

Technical name	ID No.	Concentration (mass %)	Diluent (mass %)			Water (mass %)	Packing method	Temperature (°C)		Notes
			A	B	I			Control	Emergency	
(1)	(2)	(3)	(4a)	(4b)	(4c)	(5)	(6)	(7a)	(7b)	(8)
Dicumyl peroxide	UN3110	>52–100			≤48		OP8			9
Dicumyl peroxide	Exempt	≤52			≥48		Exempt			29
Dicyclohexyl peroxydicarbonate	UN3112	>91–100					OP3	10	15	
Dicyclohexyl peroxydicarbonate	UN3114	≤91				≥9	OP5	10	15	
Dicyclohexyl peroxydicarbonate [as a stable dispersion in water].	UN3119	≤42					OP8	15	20	
Didecanoyl peroxide	UN3114	≤100					OP6	30	35	
2,2-Di-(4,4-di(tert-butylperoxy)cyclohexyl)propane.	UN3106	≤42			≥58		OP7			
2,2-Di-(4,4-di(tert-butylperoxy)cyclohexyl)propane.	UN3107	≤22		≥78			OP8			
Di-2,4-dichlorobenzoyl peroxide	UN3102	≤77				≥23	OP5			
Di-2,4-dichlorobenzoyl peroxide [as a paste with silicone oil].	UN3106	≤52					OP7			
Di-(2-ethoxyethyl) peroxydicarbonate	UN3115	≤52		≥48			OP7	−10	0	
Di-(2-ethylhexyl) peroxydicarbonate	UN3113	>77–100					OP5	−20	−10	
Di-(2-ethylhexyl) peroxydicarbonate	UN3115	≤77		≥23			OP7	−15	−5	
Di-(2-ethylhexyl) peroxydicarbonate [as a stable dispersion in water].	UN3119	≤62					OP8	−15	−5	
Di-(2-ethylhexyl) peroxydicarbonate [as a stable dispersion in water].	UN3119	≤52					OP8	−15	−5	
Di-(2-ethylhexyl) peroxydicarbonate [as a stable dispersion in water (frozen)].	UN3120	≤52					OP8	−15	−5	
2,2-Dihydroperoxypropane	UN3102	≤27			≥73		OP5			
Di-(1-hydroxycyclohexyl)peroxide	UN3106	≤100					OP7			
Diisobutyryl peroxide	UN3111	>32–52		≥48			OP5	−20	−10	
Diisobutyryl peroxide [as a stable dispersion in water].	UN3119	≤42					OP8	−20	−10	
Diisobutyryl peroxide	UN3115	≤32		≥68			OP7	−20	−10	
Diisopropylbenzene dihydroperoxide	UN3106	≤82	≥5			≥5	OP7			17
Diisopropyl peroxydicarbonate	UN3112	>52–100					OP2	−15	−5	
Diisopropyl peroxydicarbonate	UN3115	≤52		≥48			OP7	−20	−10	
Diisopropyl peroxydicarbonate	UN3115	≤32	≥68				OP7	−15	−5	
Dilauroyl peroxide	UN3106	≤100					OP7			
Dilauroyl peroxide [as a stable dispersion in water].	UN3109	≤42					OP8			
Di-(3-methoxybutyl) peroxydicarbonate	UN3115	≤52		≥48			OP7	−5	5	
Di-(2-methylbenzoyl)peroxide	UN3112	≤87				≥13	OP5	30	35	
Di-(4-methylbenzoyl)peroxide [as a paste with silicone oil].	UN3106	≤52					OP7			
Di-(3-methylbenzoyl) peroxide + Benzoyl (3-methylbenzoyl) peroxide + Dibenzoyl peroxide.	UN3115	≤20 + ≤18 + ≤4		≥58			OP7	35	40	
2,5-Dimethyl-2,5-di-(benzoylperoxy)hexane	UN3102	>82–100					OP5			
2,5-Dimethyl-2,5-di-(benzoylperoxy)hexane	UN3106	≤82			≥18		OP7			
2,5-Dimethyl-2,5-di-(benzoylperoxy)hexane	UN3104	≤82				≥18	OP5			
2,5-Dimethyl-2,5-di-(tert-butylperoxy)hexane	UN3103	>90–100					OP5			
2,5-Dimethyl-2,5-di-(tert-butylperoxy)hexane	UN3105	>52–90	≥10				OP7			
2,5-Dimethyl-2,5-di-(tert-butylperoxy)hexane	UN3108	≤77			≥23		OP8			
2,5-Dimethyl-2,5-di-(tert-butylperoxy)hexane	UN3109	≤52	≥48				OP8			
2,5-Dimethyl-2,5-di-(tert-butylperoxy)hexane [as a paste].	UN3108	≤47					OP8			
2,5-Dimethyl-2,5-di-(tert-butylperoxy)hexyne-3.	UN3101	>86–100					OP5			
2,5-Dimethyl-2,5-di-(tert-butylperoxy)hexyne-3.	UN3103	>52–86	≥14				OP5			
2,5-Dimethyl-2,5-di-(tert-butylperoxy)hexyne-3.	UN3106	≤52			≥48		OP7			
2,5-Dimethyl-2,5-di-(2-ethylhexanoylperoxy)hexane.	UN3113	≤100					OP5	20	25	
2,5-Dimethyl-2,5-dihydroperoxyhexane	UN3104	≤82				≥18	OP6			
2,5-Dimethyl-2,5-di-(3,5,5-trimethylhexanoylperoxy)hexane.	UN3105	≤77	≥23				OP7			
1,1-Dimethyl-3-hydroxybutylperoxyneoheptanoate.	UN3117	≤52	≥48				OP8	0	10	
Dimyristyl peroxydicarbonate	UN3116	≤100					OP7	20	25	
Dimyristyl peroxydicarbonate [as a stable dispersion in water].	UN3119	≤42					OP8	20	25	
Di-(2-neodecanoylperoxyisopropyl)benzene	UN3115	≤52	≥48				OP7	−10	0	
Di-(2-neodecanoyl-peroxyisopropyl) benzene, as stable dispersion in water.	UN3119	≤42					OP8	−15	−5	
Di-n-nonanoyl peroxide	UN3116	≤100					OP7	0	10	
Di-n-octanoyl peroxide	UN3114	≤100					OP5	10	15	
Di-(2-phenoxyethyl)peroxydicarbonate	UN3102	>85–100					OP5			
Di-(2-phenoxyethyl)peroxydicarbonate	UN3106	≤85				≥15	OP7			
Dipropionyl peroxide	UN3117	≤27		≥73			OP8	15	20	
Di-n-propyl peroxydicarbonate	UN3113	≤100					OP3	−25	−15	

TABLE 1 TO PARAGRAPH (c)—ORGANIC PEROXIDE TABLE—Continued

Technical name	ID No.	Concentration (mass %)	Diluent (mass %)			Water (mass %)	Packing method	Temperature (°C)		Notes
			A	B	I			Control	Emergency	
(1)	(2)	(3)	(4a)	(4b)	(4c)	(5)	(6)	(7a)	(7b)	(8)
Di-n-propyl peroxydicarbonate	UN3113	≤77		≥23			OP5	−20	−10	
Disuccinic acid peroxide	UN3102	>72–100					OP4			18
Disuccinic acid peroxide	UN3116	≤72				≥28	OP7	10	15	
Di-(3,5,5-trimethylhexanoyl) peroxide	UN3115	>52–82	≥18				OP7	0	10	
Di-(3,5,5-trimethylhexanoyl)peroxide [as a stable dispersion in water].	UN3119	≤52					OP8	10	15	
Di-(3,5,5-trimethylhexanoyl) peroxide	UN3119	>38–52	≥48				OP8	10	15	
Di-(3,5,5-trimethylhexanoyl)peroxide	UN3119	≤38	≥62				OP8	20	25	
Ethyl 3,3-di-(tert-amylperoxy)butyrate	UN3105	≤67	≥33				OP7			
Ethyl 3,3-di-(tert-butylperoxy)butyrate	UN3103	>77–100					OP5			
Ethyl 3,3-di-(tert-butylperoxy)butyrate	UN3105	≤77	≥23				OP7			
Ethyl 3,3-di-(tert-butylperoxy)butyrate	UN3106	≤52			≥48		OP7			
1-(2-ethylhexanoylperoxy)-1,3-Dimethylbutyl peroxypivalate.	UN3115	≤52	≥45	≥10			OP7	−20	−10	
tert-Hexyl peroxyneodecanoate	UN3115	≤71	≥29				OP7	0	10	
tert-Hexyl peroxypivalate	UN3115	≤72		≥28			OP7	10	15	
tert-Hexyl peroxypivalate	UN3117	≤52 as a stable dispersion in water.					OP8	+15	+20	
3-Hydroxy-1,1-dimethylbutyl peroxyneodecanoate.	UN3115	≤77	≥23				OP7	−5	5	
3-Hydroxy-1,1-dimethylbutyl peroxyneodecanoate [as a stable dispersion in water].	UN3119	≤52					OP8	−5	5	
3-Hydroxy-1,1-dimethylbutyl peroxyneodecanoate.	UN3117	≤52	≥48				OP8	−5	5	
Isopropyl sec-butyl peroxydicarbonat + Di-sec-butyl peroxydicarbonate + Di-isopropyl peroxydicarbonate.	UN3111	≤52 + ≤28 + ≤22 ..					OP5	−20	−10	
Isopropyl sec-butyl peroxydicarbonate + Di-sec-butyl peroxydicarbonate + Di-isopropyl peroxydicarbonate.	UN3115	≤32 + ≤15 −18 + ≤12 −15.	≥38				OP7	−20	−10	
Isopropylcumyl hydroperoxide	UN3109	≤72	≥28				OP8			13
p-Menthyl hydroperoxide	UN3105	>72–100					OP7			13
p-Menthyl hydroperoxide	UN3109	≤72	≥28				OP8			
Methylcyclohexanone peroxide(s)	UN3115	≤67		≥33			OP7	35	40	
Methyl ethyl ketone peroxide(s)	UN3101	≤52	≥48				OP5			5, 13
Methyl ethyl ketone peroxide(s)	UN3105	≤45	≥55				OP7			5
Methyl ethyl ketone peroxide(s)	UN3107	≤40	≥60				OP8			7
Methyl isobutyl ketone peroxide(s)	UN3105	≤62	≥19				OP7			5, 23
Methyl isopropyl ketone peroxide(s)	UN3109	(See remark 31)	≥70				OP8			31
Organic peroxide, liquid, sample	UN3103						OP2			12
Organic peroxide, liquid, sample, temperature controlled.	UN3113						OP2			12
Organic peroxide, solid, sample	UN3104						OP2			12
Organic peroxide, solid, sample, temperature controlled.	UN3114						OP2			12
3,3,5,7,7-Pentamethyl-1,2,4-Trioxepane	UN3107	≤100					OP8			
Peroxyacetic acid, type D, stabilized	UN3105	≤43					OP7			13, 20
Peroxyacetic acid, type E, stabilized	UN3107	≤43					OP8			13, 20
Peroxyacetic acid, type F, stabilized	UN3109	≤43					OP8			13, 20, 28
Peroxyacetic acid or peracetic acid [with not more than 7% hydrogen peroxide].	UN3107	≤36				≥15	OP8			13, 20, 28
Peroxyacetic acid or peracetic acid [with not more than 20% hydrogen peroxide].	Exempt	≤6				≥60	Exempt			28
Peroxyacetic acid or peracetic acid [with not more than 26% hydrogen peroxide].	UN3109	≤17					OP8			13, 20, 28
Peroxylauric acid	UN3118	≤100					OP8	35	40	
1-Phenylethyl hydroperoxide	UN3109	≤38		≥62			OP8			
Pinanyl hydroperoxide	UN3105	>56–100					OP7			13
Pinanyl hydroperoxide	UN3109	≤56	≥44				OP8			
Polyether poly-tert-butylperoxycarbonate	UN3107	≤52		≥48			OP8			
Tetrahydronaphthyl hydroperoxide	UN3106	≤100					OP7			
1,1,3,3-Tetramethylbutyl hydroperoxide	UN3105	≤100					OP7			
1,1,3,3-Tetramethylbutyl peroxy-2-ethylhexanoate.	UN3115	≤100					OP7	15	20	
1,1,3,3-Tetramethylbutyl peroxyneodecanoate.	UN3115	≤72		≥28			OP7	−5	5	
1,1,3,3-Tetramethylbutyl peroxyneodecanoate [as a stable dispersion in water].	UN3119	≤52					OP8	−5	5	
1,1,3,3-tetramethylbutyl peroxypivalate	UN3115	≤77	≥23				OP7	0	10	
3,6,9-Triethyl-3,6,9-trimethyl-1,4,7-triperoxonane.	UN3110	≤17	≥18		≥65		OP8			

TABLE 1 TO PARAGRAPH (c)—ORGANIC PEROXIDE TABLE—Continued

Technical name	ID No.	Concentration (mass %)	Diluent (mass %)			Water (mass %)	Packing method	Temperature (°C)		Notes
			A	B	I			Control	Emergency	
(1)	(2)	(3)	(4a)	(4b)	(4c)	(5)	(6)	(7a)	(7b)	(8)
3,6,9-Triethyl-3,6,9-trimethyl-1,4,7-triperoxonane.	UN3105	≤42	≥58	.....	.....	.....	OP7	.....	.....	26

Notes:
1. For domestic shipments, OP8 is authorized.
2. Available oxygen must be <4.7%.
3. For concentrations <80% OP5 is allowed. For concentrations of at least 80% but <85%, OP4 is allowed. For concentrations of at least 85%, maximum package size is OP2.
4. The diluent may be replaced by di-tert-butyl peroxide.
5. Available oxygen must be ≤9% with or without water.
6. For domestic shipments, OP5 is authorized.
7. Available oxygen must be ≤8.2% with or without water.
8. Only non-metallic packagings are authorized.
9. For domestic shipments this material may be transported under the provisions of paragraph (h)(3)(xii) of this section.
10. [Reserved]
11. [Reserved]
12. Samples may only be offered for transportation under the provisions of paragraph (b)(2) of this section.
13. ''Corrosive'' subsidiary risk label is required.
14. [Reserved]
15. No ''Corrosive'' subsidiary risk label is required for concentrations below 80%.
16. With <6% di-tert-butyl peroxide.
17. With ≤8% 1-isopropylhydroperoxy-4-isopropylhydroxybenzene.
18. Addition of water to this organic peroxide will decrease its thermal stability.
19. [Reserved]
20. Mixtures with hydrogen peroxide, water, and acid(s).
21. With diluent type A, with or without water.
22. With ≥36%% diluent type A by mass, and in addition ethylbenzene.
23. With ≥19% diluent type A by mass, and in addition methyl isobutyl ketone.
24. Diluent type B with boiling point >100 C.
25. No ''Corrosive'' subsidiary risk label is required for concentrations below 56%.
26. Available oxygen must be ≤7.6%.
27. Formulations derived from distillation of peroxyacetic acid originating from peroxyacetic acid in a concentration of not more than 41% with water, total active oxygen less than or equal to 9.5% (peroxyacetic acid plus hydrogen peroxide).
28. For the purposes of this section, the names ''Peroxyacetic acid'' and ''Peracetic acid'' are synonymous.
29. Not subject to the requirements of this subchapter for Division 5.2.
30. Diluent type B with boiling point >130 °C (266 °F).
31. Available oxygen ≤6.7%.
32. Active oxygen concentration ≤4.15%.

* * * * * (g) * * *

TABLE 4 TO PARAGRAPH (g)—ORGANIC PEROXIDE PORTABLE TANK TABLE

UN No.	Hazardous material	Minimum test pressure (bar)	Minimum shell thickness (mm-reference steel) See . . .	Bottom opening requirements See . . .	Pressure-relief requirements See . . .	Filling limits	Control temperature	Emergency temperature
3109	ORGANIC PEROXIDE, TYPE F, LIQUID.							
	*	*	*	*	*	*	*	
	tert-Butyl hydroperoxide, not more than 56% with diluent type B [2].	4	§ 178.274(d)(2)	§ 178.275(d)(3)	§ 178.275(g)(1)	Not more than 90% at 59 °F (15 °C).		
	*	*	*	*	*	*	*	

Notes:
1. ''Corrosive'' subsidiary risk placard is required.
2. Diluent type B is tert-Butyl alcohol.

* * * * *

■ 20. In § 173.232, add paragraph (h) to read as follows:

§ 173.232 Articles containing hazardous materials, n.o.s.

* * * * *

(h) For transport by aircraft, the following additional requirements apply:

(1) Articles transported under UN3548, which do not have an existing proper shipping name, and which contain only environmentally hazardous substances where the quantity of the environmentally hazardous substance in the article exceeds 5 L or 5 kg, must be prepared for transport in accordance with this section for transport by air. In addition to the environmentally hazardous substance, the article may also contain lithium cells or batteries that comply with § 173.185(c)(4).

(2) Articles transported under UN3538, which do not have an existing proper shipping name, and which contain only gases of Division 2.2 without a subsidiary hazard, but excluding refrigerated liquefied gases and gases forbidden for transport on

passenger aircraft, where the quantity of the Division 2.2 gas exceeds the quantity limits for UN 3363, as prescribed in § 173.222 must be prepared for transport in accordance with this section. Articles transported under this provision are limited to a maximum net quantity of gas of 75 kg by passenger aircraft and 150 kg by cargo-only aircraft. In addition to the Division 2.2 gas, the article may also contain lithium cells or batteries that comply with § 173.185(c)(4).

■ 21. In § 173.301b, revise paragraphs (c)(1), (c)(2)(ii) through (iv), (d)(1), and (f) to read as follows:

§ 173.301b Additional general requirements for shipment of UN pressure receptacles.

* * * * *

(c) * * *

(1) When the use of a valve is prescribed, the valve must conform to the requirements in ISO 10297:2014(E) and ISO 10297:2014/Amd 1:2017 (IBR, see § 171.7 of this subchapter). Quick release cylinder valves for specification and type testing must conform to the requirements in ISO 17871:2020 or, until December 31, 2026, ISO 17871:2015(E) (IBR, see § 171.7 of this subchapter). Until December 31, 2026, a quick release valve conforming to the requirements in ISO 17871:2015(E) (IBR, see § 171.7 of this subchapter) continues to be authorized for use.

(2) * * *

(ii) By equipping the UN pressure receptacle with a valve cap conforming to the requirements of ISO 11117:1998(E), ISO 11117:2008(E) and Technical Corrigendum 1, or ISO 11117:2019(E) (IBR, see § 171.7 of this subchapter). Until December 31, 2026, the manufacture of a valve cap conforming to the requirements ISO 11117:2008(E) and Technical Corrigendum 1 (IBR, see § 171.7 of this subchapter) is authorized. Until December 31, 2014, the manufacture of a valve cap conforming to the requirements in ISO 11117:1998(E) (IBR, see § 171.7 of this subchapter) was authorized. The cap must have vent holes of sufficient cross-sectional area to evacuate the gas if leakage occurs at the valve.

(iii) By protecting the valves with shrouds or guards conforming to the requirements in ISO 11117:2019 (IBR, see § 171.7 of this subchapter). Until December 31, 2026, the valves may continue to be protected by shrouds or guards conforming to the requirements in ISO 11117:2008 and Technical Corrigendum 1 (IBR, see § 171.7 of this subchapter). For metal hydride storage systems, by protecting the valves in accordance with the requirements in ISO 16111:2018(E) or, until December 31, 2026, in accordance with ISO 16111:2008(E) (IBR, see § 171.7 of this subchapter).

(iv) By using valves designed and constructed with sufficient inherent strength to withstand damage, in accordance with Annex B of ISO 10297:2014(E)/Amd. 1:2017 (IBR, see § 171.7 of this subchapter);

* * * * *

(d) *Non-refillable UN pressure receptacles.* (1) When the use of a valve is prescribed, the valve must conform to the requirements in ISO 11118:2015(E) and ISO 11118:2015/Amd 1:2019 until further notice. Conformance with ISO 11118:2015 without the supplemental amendment is authorized until December 31, 2026 (IBR, *see* § 171.7 of this subchapter).

* * * * *

(f) *Hydrogen bearing gases.* A steel UN pressure receptacle or a UN composite pressure receptacle with a steel liner bearing an ''H'' mark must be used for hydrogen bearing gases or other embrittling gases that have the potential of causing hydrogen embrittlement.

* * * * *

■ 22. In § 173.302b, add paragraph (g) to read as follows:

§ 173.302b Additional requirements for shipment of non-liquefied (permanent) compressed gases in UN pressure receptacles.

* * * * *

(g) *Mixtures of Fluorine with Nitrogen.* Mixtures of fluorine and nitrogen with a fluorine concentration below 35% by volume may be filled in pressure receptacles up to a maximum allowable working pressure for which the partial pressure of fluorine does not exceed 31 bar (abs.).

$$\text{working pressure (bar)} < \frac{31}{x_f} - 1$$

in which X_f = fluorine concentration in % by volume/100.

Mixtures of fluorine and inert gases with a fluorine concentration below 35% by volume may be filled in pressure receptacles up to a maximum allowable working pressure for which the partial pressure of fluorine does not exceed 31 bar (abs.), additionally taking the coefficient of nitrogen equivalency in accordance with ISO 10156:2017 into account when calculating the partial pressure.

$$\text{working pressure (bar)} < \frac{31}{x_f}(x_f + k_k + x_k)$$

in which X_f = fluorine concentration in % by volume/100.

K_k = coefficient of equivalency of an inert gas relative to nitrogen (coefficient of nitrogen equivalency)

X_k = inert gas concentration in % by volume/100

However, the working pressure for mixtures of fluorine and inert gases shall not exceed 200 bar. The minimum test pressure of pressure receptacles for mixtures of fluorine and inert gases equals 1.5 times the working pressure or 200 bar, with the greater value to be applied.

* * * * *

■ 23. In § 173.302c, revise paragraph (k) to read as follows:

§ 173.302c Additional requirements for the shipment of adsorbed gases in UN pressure receptacles.

* * * * *

(k) The filling procedure must be in accordance with Annex A of ISO 11513:2019 (IBR, see § 171.7 of this subchapter). Until December 31, 2026, filling may instead be in accordance with Annex A of ISO 11513:2011(E) (IBR, see § 171.7 of this subchapter).

* * * * *

■ 24. Revise § 173.311 to read as follows:

§ 173.311 Metal Hydride Storage Systems.

The following packing instruction is applicable to transportable UN Metal hydride storage systems (UN3468) with pressure receptacles not exceeding 150 liters (40 gallons) in water capacity, and having a maximum developed pressure not exceeding 25 MPa. UN Metal hydride storage systems must be designed, constructed, initially inspected, and tested in accordance with ISO 16111:2018 (IBR, see § 171.7 of this subchapter), consistent with § 178.71(m) of this subchapter. Until December 31, 2026, UN Metal hydride storage systems may instead conform to ISO 16111:2008(E) (IBR, see § 171.7 of this subchapter). Steel pressure receptacles or composite pressure receptacles with steel liners must be marked in accordance with

§ 173.301b(f), which specifies that a steel UN pressure receptacle displaying an ''H'' mark must be used for hydrogen-bearing gases or other gases that may cause hydrogen embrittlement. Requalification intervals must be no more than every five years, as specified in § 180.207 of this subchapter, in accordance with the requalification procedures prescribed in ISO 16111:2018 or ISO 16111:2008.

* * * * *

PART 175—CARRIAGE BY AIRCRAFT

■ 25. The authority citation for part 175 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 44701; 49 CFR 1.81 and 1.97.

■ 26. In § 175.1, add paragraph (e) to read as follows:

§ 175.1 Purpose, scope, and applicability.

* * * * *

(e) In addition to the requirements of this part, air carriers that are certificate holders authorized to conduct operations in accordance with 14 CFR part 121 are also required to have a Safety Management System that meets the conditions of 14 CFR part 5 and is acceptable to the Federal Aviation Administration (FAA) Administrator.

■ 27. In § 175.10, revise paragraph (a) introductory text, (a)(14) introductory text, (a)(15)(v)(A), (a)(15)(vi)(A), (a)(17)(ii)(C), (a)(18) introductory text, and (a)(26) introductory text to read as follows:

§ 175.10 Exceptions for passengers, crewmembers, and air operators.

* * * * *

(a) This subchapter does not apply to the following hazardous materials when carried by aircraft passengers or crewmembers provided the requirements of §§ 171.15 and 171.16 of this subchapter (see paragraph (c) of this section) and the requirements of this section are met. The most appropriate description of the hazardous material item or article must be selected and the associated conditions for exception must be followed:

* * * * *

(14) Battery powered heat-producing devices (*e.g.,* battery-operated equipment such as diving lamps and soldering equipment) as checked or carry-on baggage and with the approval of the operator of the aircraft. The heating element, the battery, or other component (*e.g.,* fuse) must be isolated to prevent unintentional activation during transport. Any battery that is removed must be carried in accordance with the provisions for spare batteries in paragraph (a)(18) of this section. Each lithium battery must be of a type that meets the requirements of each test in the UN Manual of Tests and Criteria, Part III, Subsection 38.3 (IBR, see § 171.7 of this subchapter), and each installed or spare lithium battery:

* * * * *

(15) * * *

(v) * * *

(A) Adequately protected against damage by design of the wheelchair or mobility aid and securely attached to the wheelchair or mobility aid; or

* * * * *

(vi) * * *

(A) Adequately protected against damage by design of the wheelchair or mobility aid and securely attached to the wheelchair or mobility aid; or

* * * * *

(17) * * *

(ii) * * *

(C) The battery is adequately protected against damage by design of the wheelchair or mobility aid and securely attached to the wheelchair or other mobility aid; and

* * * * *

(18) Except as provided in § 173.21 of this subchapter, portable electronic devices (*e.g.,* watches, calculating machines, cameras, cellular phones, laptop and notebook computers, camcorders, medical devices, etc.), containing dry cells or dry batteries (including lithium cells or batteries) and spare dry cells or batteries for these devices, when carried by passengers or crew members for personal use. Portable electronic devices powered by lithium batteries may be carried in either checked or carry-on baggage. When carried in checked baggage, portable electronic devices powered by lithium batteries must be completely switched off (*i.e.,* not in sleep or hibernation mode) and protected to prevent unintentional activation or damage, except portable electronic devices powered by lithium batteries with lithium content not exceeding 0.3 grams for lithium metal batteries and 2.7 Wh for lithium ion batteries are not required to be switched off. Spare lithium batteries must be carried in carry-on baggage only. Each installed or spare lithium battery must be of a type proven to meet the requirements of each test in the UN Manual of Tests and Criteria, Part III, Sub-section 38.3, and each spare lithium battery must be individually protected so as to prevent short circuits (*e.g.,* by placement in original retail packaging, by otherwise insulating terminals by taping over exposed terminals, or placing each battery in a separate plastic bag or protective pouch). In addition, each installed or spare lithium battery:

* * * * *

(26) Baggage equipped with lithium batteries must be carried as carry-on baggage unless the lithium batteries are removed from the baggage. Each lithium battery must be of a type which meets the requirements of each test in the UN Manual of Tests and Criteria, Part III, Subsection 38.3 (IBR, *see* § 171.7 of this subchapter). Additionally, removed batteries must be carried in accordance with the provision for spare batteries prescribed in paragraph (a)(18) of this section. Baggage equipped with lithium batteries may be carried as checked baggage and electronic features may remain active if the batteries do not exceed:

* * * * *

■ 28. In § 175.33, revise paragraph (a)(13)(iii) to read as follows:

§ 175.33 Shipping paper and information to the pilot-in-command.

(a) * * *

(13) * * *

(iii) UN3481 and UN3091 are not required to appear on the information provided to the pilot-in-command when prepared in accordance with § 173.185(c).

* * * * *

PART 178—SPECIFICATIONS FOR PACKAGINGS

■ 29. The authority citation for part 178 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.81 and 1.97.

■ 30. In § 178.37, revise paragraph (j) to read as follows:

§ 178.37 Specification 3AA and 3AAX seamless steel cylinders.

* * * * *

(j) *Flattening test.* A flattening test must be performed on one cylinder, taken at random out of each lot of 200 or fewer, by placing the cylinder between wedge shaped knife edges, having a 60-degree included angle, rounded to ½-inch radius. The longitudinal axis of the cylinder must be at a 90-degree angle to the knife edges during the test. For lots of 30 or fewer, flattening tests are authorized to be made on a ring at least eight (8) inches long, cut from each cylinder and subjected to the same heat treatment as the finished cylinder. Cylinders may be subjected to a bend test in lieu of the flattening test. Two bend test specimens must be taken in accordance with ISO 9809–1:2019(E) or ASTM E290 (IBR, see § 171.7 of this subchapter), and must be

subjected to the bend test specified therein.

* * * * *

■ 31. In § 178.71, revise paragraphs (f)(4), (g), (i), (k)(1)(i) and (ii), (m), and (n) to read as follows:

§ 178.71 Specifications for UN pressure receptacles.

* * * * *

(f) * * *

(4) ISO 21172–1:2015(E) Gas cylinders—Welded steel pressure drums up to 3,000 litres capacity for the transport of gases—Design and construction—Part 1: Capacities up–to 1,000 litres (IBR, *see* § 171.7 of this subchapter) in combination with ISO 21172–1:2015/Amd 1:2018(E)—Gas Cylinders—Welded steel pressure drums up to 3,000 litres capacity for the transport of gases—Design and construction—Part 1: Capacities up—to 1,000 litres—Amendment 1 (IBR, *see* § 171.7 of this subchapter). Until December 31, 2026, the use of ISO 21172–1:2015 (IBR, see § 171.7 of this subchapter) without the supplemental amendment is authorized.

* * * * *

(g) *Design and construction requirements for UN refillable seamless steel cylinders.* In addition to the general requirements of this section, UN refillable seamless steel cylinders must conform to the following ISO standards, as applicable:

(1) ISO 9809–1:2019(E), Gas cylinders—Refillable seamless steel gas cylinders—Design, construction, and testing—Part 1: Quenched and tempered steel cylinders with tensile strength less than 1100 MPa (IBR, see § 171.7 of this subchapter). Until December 31, 2026, the manufacture of a cylinder conforming to the requirements in ISO 9809–1:2010(E) (IBR, see § 171.7 of this subchapter) is authorized.

(2) ISO 9809–2:2019(E), Gas cylinders—Design, construction, and testing of refillable seamless steel gas cylinders and tubes—Part 2: Quenched and tempered steel cylinders and tubes with tensile strength greater than or equal to 1100 MPa (IBR, see § 171.7 of this subchapter). Until December 31, 2026, the manufacture of a cylinder conforming to the requirements in ISO 9809–2:2010 (IBR, see § 171.7 of this subchapter) is authorized.

(3) ISO 9809–3:2019(E), Gas cylinders—Design, construction, and testing of refillable seamless steel gas cylinders and tubes—Part 3: Normalized steel cylinders and tubes. (IBR, see § 171.7 of this subchapter). Until December 31, 2026, a cylinder may instead conform to ISO 9809–3:2010(E) (IBR, see § 171.7 of this subchapter).

(4) ISO 9809–4:2014(E), Gas cylinders—Refillable seamless steel gas cylinders—Design, construction, and testing—Part 4: Stainless steel cylinders with an Rm value of less than 1,100 MPa (IBR, see § 171.7 of this subchapter).

* * * * *

(i) *Design and construction requirements for UN non-refillable metal cylinders.* In addition to the general requirements of this section, UN non-refillable metal cylinders must conform to ISO 11118:2015(E) Gas cylinders—Non-refillable metallic gas cylinders—Specification and test methods, in combination with ISO 11118:2015/Amd 1:2019 Gas cylinders—Non-refillable metallic gas cylinders—Specification and test methods—Amendment 1. (IBR, *see* § 171.7 of this subchapter). Until December 31, 2026, the use of ISO 11118:2015 (IBR, see § 171.7 of this subchapter) without the supplemental amendment is authorized.

* * * * *

(k) * * *

(1) * * *

(i) ISO 9809–1:2019(E) Gas cylinders—Refillable seamless steel gas cylinders—Design, construction, and testing—Part 1: Quenched and tempered steel cylinders with tensile strength less than 1100 MPa (IBR, see § 171.7 of this subchapter). Until December 31, 2026, the manufacture of a cylinder conforming to the requirements in ISO 9809–1:2010(E) (IBR, see § 171.7 of this subchapter) is authorized.

(ii) ISO 9809–3:2019(E) Gas cylinders—Design, construction, and testing of refillable seamless steel gas cylinders and tubes—Part 3: Normalized steel cylinders and tubes (IBR, see § 171.7 of this subchapter). Until December 31, 2026, the manufacture of a cylinder conforming to the requirements in ISO 9809–3:2010(E) (IBR, see § 171.7 of this subchapter) is authorized.

* * * * *

(m) *Design and construction requirements for UN metal hydride storage systems.* In addition to the general requirements of this section, metal hydride storage systems must conform to ISO 16111:2018(E) Transportable gas storage devices—Hydrogen absorbed in reversible metal hydride (IBR, *see* § 171.7 of this subchapter). Until December 31, 2026, the manufacture of a UN metal hydride storage system conforming to the requirements in ISO 16111:2008 (IBR, *see* § 171.7 of this subchapter) is authorized.

(n) *Design and construction requirements for UN cylinders for the transportation of adsorbed gases.* In addition to the general requirements of this section, UN cylinders for the transportation of adsorbed gases must conform to the following ISO standards, as applicable:

(1) ISO 11513:2019, Gas cylinders—Refillable welded steel cylinders containing materials for sub-atmospheric gas packaging (excluding acetylene)—Design, construction, testing, use and periodic inspection (IBR, *see* § 171.7 of this subchapter). Until December 31, 2026, the manufacture of a cylinder conforming to the requirements in ISO 11513:2011(E) (IBR, *see* § 171.7 of this subchapter) is authorized.

(2) ISO 9809–1:2019(E): Gas cylinders—Refillable seamless steel gas cylinders—Design, construction, and testing—Part 1: Quenched and tempered steel cylinders with tensile strength less than 1100 MPa (IBR, *see* § 171.7 of this subchapter). Until December 31, 2026, the manufacture of a cylinder conforming to the requirements in ISO 9809–1:2010(E) (IBR, *see* § 171.7 of this subchapter is authorized.

* * * * *

■ 32. In § 178.75, revise paragraph (d)(3) introductory text and paragraphs (d)(3)(i) through (iii) to read as follows:

§ 178.75 Specifications for MEGCs.

* * * * *

(d) * * *

(3) Each pressure receptacle of a MEGC must be of the same design type, seamless steel, or composite, and constructed and tested according to one of the following ISO standards:

(i) ISO 9809–1:2019(E), Gas cylinders—Refillable seamless steel gas cylinders—Design, construction, and testing—Part 1: Quenched and tempered steel cylinders with tensile strength less than 1100 MPa (IBR, see § 171.7 of this subchapter). Until December 31, 2026, the manufacture of a cylinder conforming to the requirements in ISO 9809–1:2010(E) (IBR, see § 171.7 of this subchapter) is authorized.

(ii) ISO 9809–2:2019(E), Gas cylinders—Design, construction and testing of refillable seamless steel gas cylinders and tubes—Part 2: Quenched and tempered steel cylinders and tubes with tensile strength greater than or equal to 1100 MPa (IBR, see § 171.7 of this subchapter). Until December 31, 2026, the manufacture of a cylinder conforming to the requirements in \ ISO 9809–2:2010(E) (IBR, see § 171.7 of this subchapter) is authorized.

(iii) ISO 9809–3:2019(E), Gas cylinders—Design, construction, and

testing of refillable seamless steel gas cylinders and tubes—Part 3: Normalized steel cylinders and tubes (IBR, see § 171.7 of this subchapter). Until December 31, 2026, the manufacture of a cylinder conforming to the requirements in ISO 9809–3:2010(E) (IBR, see § 171.7 of this subchapter) is authorized.

* * * * *

■ 33. In § 178.609, revise paragraph (d)(2) to read as follows:

§ 178.609 Test requirements for packagings for infectious substances.

* * * * *

(d) * * *

(2) Where the samples are in the shape of a drum or jerrican, three samples must be dropped, one in each of the following orientations:

(i) Diagonally on the top edge, with the center of gravity directly above the point of impact;

(ii) Diagonally on the base edge; and

(iii) Flat on the body or side.

* * * * *

■ 34. In § 178.706, revise paragraph (c)(3) to read as follows:

§ 178.706 Standards for rigid plastic IBCs.

* * * * *

(c) * * *

(3) No used material other than production residues or regrind from the same manufacturing process may be used in the manufacture of rigid plastic IBCs unless approved by the Associate Administrator.

* * * * *

■ 35. In § 178.707, revise paragraph (c)(3)(iii) to read as follows:

§ 178.707 Standards for composite IBCs.

* * * * *

(c) * * *

(3) * * *

(iii) No used material, other than production residues or regrind from the same manufacturing process, may be used in the manufacture of inner receptacles unless approved by the Associate Administrator.

* * * * *

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

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

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.81 and 1.97.

■ 37. In § 180.207, revise paragraphs (d)(3) and (5) and add paragraph (d)(8) to read as follows:

§ 180.207 Requirements for requalification of UN pressure receptacles.

* * * * *

(d) * * *

(3) Dissolved acetylene UN cylinders: Each dissolved acetylene cylinder must be requalified in accordance with ISO 10462:2013(E)/Amd 1:2019 (IBR, see § 171.7 of this subchapter). However, a cylinder may continue to be requalified in accordance with ISO 10462:2013(E) (IBR, see § 171.7 of this subchapter) without the supplemental amendment until December 31, 2024. Further, a cylinder requalified in accordance with ISO 10462:2013(E) until December 31, 2018, may continue to be used until its next required requalification. The porous mass and the shell must be requalified no sooner than three (3) years, six (6) months, from the date of manufacture. Thereafter, subsequent requalifications of the porous mass and shell must be performed at least once every 10 years.

* * * * *

(5) UN cylinders for adsorbed gases: Each UN cylinder for adsorbed gases must be inspected and tested in accordance with § 173.302c of this subchapter and ISO 11513:2019(E) (IBR, see § 171.7 of this subchapter). However, a UN cylinder may continue to be requalified in accordance with ISO 11513:2011(E) (IBR, see § 171.7 of this subchapter) until December 31, 2024.

* * * * *

(8) UN pressure drums: UN pressure drums must be inspected and tested in accordance with ISO 23088:2020 (IBR, see § 171.7 of this subchapter).

* * * * *

Issued in Washington, DC, on March 28, 2024, under authority delegated in 49 CFR 1.97.

Tristan H. Brown,

Deputy Administrator, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2024–06956 Filed 4–9–24; 8:45 am]

BILLING CODE 4910–60–P

FEDERAL REGISTER

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Part V

The President

Federal Register
Vol. 89, No. 70
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Presidential Documents

Title 3—

The President

Notice of April 9, 2024

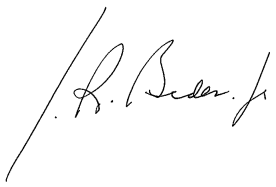
Continuation of the National Emergency With Respect to Somalia

On April 12, 2010, by Executive Order 13536, the President declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the deterioration of the security situation and the persistence of violence in Somalia; acts of piracy and armed robbery at sea off the coast of Somalia, which have been the subject of United Nations Security Council resolutions; and violations of the arms embargo imposed by the United Nations Security Council.

On July 20, 2012, the President issued Executive Order 13620 to take additional steps to deal with the national emergency declared in Executive Order 13536 in view of United Nations Security Council Resolution 2036 of February 22, 2012, and Resolution 2002 of July 29, 2011, and to address: exports of charcoal from Somalia, which generate significant revenue for al-Shabaab; the misappropriation of Somali public assets; and certain acts of violence committed against civilians in Somalia, all of which contribute to the deterioration of the security situation and the persistence of violence in Somalia.

The situation with respect to Somalia continues to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. For this reason, the national emergency declared on April 12, 2010, and the measures adopted on that date and on July 20, 2012, to deal with that threat, must continue in effect beyond April 12, 2024. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13536.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
April 9, 2024.

[FR Doc. 2024–07816
Filed 4–9–24; 2:00 pm]
Billing code 3395–F4–P

Presidential Documents

Notice of April 9, 2024

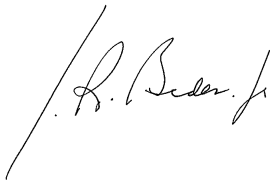
Continuation of the National Emergency With Respect to Specified Harmful Foreign Activities of the Government of the Russian Federation

On April 15, 2021, by Executive Order 14024, I declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by specified harmful foreign activities of the Government of the Russian Federation. On March 8, 2022, I issued Executive Order 14066 to expand the scope of the national emergency declared in Executive Order 14024. On August 20, 2021, March 11, 2022, April 6, 2022, and December 22, 2023, I issued Executive Orders 14039, 14068, 14071, and 14114, respectively, to take additional steps with respect to the national emergency declared in Executive Order 14024.

Specified harmful foreign activities of the Government of the Russian Federation—in particular, efforts to undermine the conduct of free and fair democratic elections and democratic institutions in the United States and its allies and partners; to engage in and facilitate malicious cyber-enabled activities against the United States and its allies and partners; to foster and use transnational corruption to influence foreign governments; to pursue extraterritorial activities targeting dissidents or journalists; to undermine security in countries and regions important to United States national security; and to violate well-established principles of international law, including respect for the territorial integrity of states—continue to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States. For this reason, the national emergency declared in Executive Order 14024, which was expanded in scope by Executive Order 14066, and with respect to which additional steps were taken in Executive Orders 14039, 14068, 14071, and 14114, must continue in effect beyond April 15, 2024.

Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 14024.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
April 9, 2024.

[FR Doc. 2024–07817
Filed 4–9–24; 2:00 pm]
Billing code 3395–F4–P

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