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Presidential Documents

Title 3—

The President

Proclamation 10312 of November 19, 2021

National Child's Day, 2021

By the President of the United States of America

A Proclamation

Our Nation's children are the kite strings that hold our national ambitions aloft—and it is our shared responsibility to make sure that they have every opportunity to thrive. On National Child's Day, we recommit ourselves to ensuring that every child in America has a fair shot at a bright future, regardless of the gender, race, ethnicity, or the zip code they are born into.

To support our Nation's children, it is imperative that we work to deliver equal access to quality child care and education, health care, good jobs with dignity, and a clean planet. That is why I am working with the Congress to pass my Administration's Build Back Better plan—a transformative investment in children, families, climate resilience, and the foundations of our economy. The Build Back Better Act is poised to deliver high-quality child care that all families can afford, universal access to preschool for all 3- and 4-year-olds, lower costs for higher education so that every child has an equal footing and opportunity to succeed, historic tax cuts for working families raising children, the largest expansion of affordable health care coverage since the Affordable Care Act, and the largest investment to fight climate change in American history.

This landmark legislation will help ensure that every child has a safer and healthier upbringing. It eases the cost burden of raising a family—delivering a tax cut directly into the pockets of working parents. It will help America once again set the pace around the world when it comes to educational attainment, reversing generations of underinvestment in our children's development and care. It will help us cut greenhouse gas emissions and reduce pollution so that our children can breathe clean air. With the Bipartisan Infrastructure Act—we will also deliver high-speed internet access to every American household and replace our Nation's lead water pipes so that every child can drink clean water at home and at school. I will also continue to make the case for establishing a paid family and medical leave program so no worker has to make the impossible choice between work and caring for themselves or a family member.

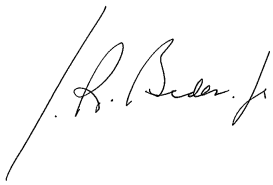
These historic bills build on the foundation we laid with the American Rescue Plan, which has set us on a course to reduce child poverty in America by nearly half. The law continues to deliver critical resources that have allowed our Nation's children to safely return to the classroom, and it provides essential tools to address the mental health needs of our children and much-needed relief to families to improve maternal and child health care.

We owe every child the opportunity to dream and flourish, supported by adults helping to make their dreams a reality. On National Child's Day, we reaffirm our commitment to uplift the children in our lives and in our communities. Their future is our future, and our Nation's success tomorrow relies on the care and investment we provide for our children today.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim November 20, 2021,

as National Child's Day. I call upon all government officials, educators, volunteers, and all the people of the United States of America to observe this day with appropriate programs, ceremonies, and activities.

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



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Presidential Documents

Proclamation 10313 of November 19, 2021

National Family Week, 2021

By the President of the United States of America

A Proclamation

My father lived by a motto: that family was the beginning, the middle, and the end. During National Family Week, we celebrate American families, recognize the importance of spending time with relatives, and reaffirm our commitment to investing in our Nation's families.

From the beginning of my campaign for President, I said that my goal was to build our economy from the bottom up and the middle out and give America's hard-working families some much needed breathing room. This work is especially important, given the fact that the COVID–19 pandemic has presented so many challenges for families. Many families struggled with lost jobs or food insecurity. Before schools reopened, parents and caregivers had to take on additional responsibilities such as helping their children with online learning, many while working from home. So many of us went months without hugging a parent, grandparent, or grandchild. Far too many families said goodbye to a loved one—leaving an empty chair at the table and a hole in their hearts.

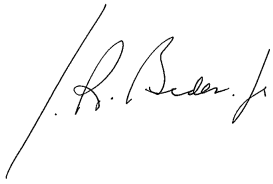
When I took office, I took immediate action to assist families through my Administration's American Rescue Plan. The American Rescue Plan has provided cash assistance to millions of working families, supported schools in safely providing in-person instruction, and delivered an expanded Child Tax Credit, which is lifting millions of children and families out of poverty. It also allowed us to implement our COVID–19 vaccination program—one of the fastest vaccination programs ever, one that is now open to all Americans ages five and up, and one that is protecting millions of families.

Now even greater progress for America's families is in sight. My Administration's Build Back Better Act and Bipartisan Infrastructure Investment and Jobs Act will further strengthen and support our Nation's families. The Bipartisan Infrastructure Investment and Jobs Act will allow us to replace lead pipes and service lines that are poisoning our children and families while the other investments in the bill will strengthen communities and create millions of good jobs. My Administration's Build Back Better Act will provide free and universal preschool, the largest investment in child care in our Nation's history, an expansion of the Affordable Care Act, and a tax cut for millions of families with children. In addition, I will continue to push for establishing a paid family and medical leave program so that no American must make the difficult choice between work and caring for themselves or a family member.

During National Family Week, we reaffirm that our Nation is stronger because of the love, compassion, and care that our families share. In this season of thanksgiving, let us continue to lift up our hard-working families and unite in support of our future generations.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim November 21 through November 27, 2021, as National Family Week. I invite States, communities, and individuals to join together in observing this week with appropriate ceremonies and activities to honor our Nation's families.

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



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Federal Register

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 2, 3, and 4

[Docket No. APHIS–2019–0001]

RIN 0579–AE54

AWA Research Facility Registration Updates, Reviews, and Reports

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Animal Welfare Act (AWA) regulations governing facilities that conduct research, experimentation, teaching, and testing by removing duplicative and unnecessary reviews and requests for information. We are removing the requirement that registered research facilities update their registration information every 3 years because the information is already collected by other means. We are also removing a redundant requirement for the Institutional Animal Care and Use Committee at each facility to conduct a continuing review of research activities involving animals and instead requiring a complete resubmission and review of such activities at least every 3 years. We will also no longer require that research facilities request an inactive status if they no longer use, handle, or transport AWA covered animals. In addition, we are clarifying the duration of a registration and conditions for its cancellation and will no longer require that the Institutional Official or Chief Executive Officer sign the annual report. We are also making miscellaneous changes to improve readability. These changes will reduce duplicative requirements and administrative burden on facilities while continuing to ensure the integrity and credibility of research findings and the protection of research animals.

DATES: This rule is effective December 27, 2021.

FOR FURTHER INFORMATION CONTACT: Dr. Lance H. Bassage, VMD, Director, National Policy Staff, Animal Care, APHIS, 4700 River Road, Unit 84, Riverdale, MD 20737; *lance.h.bassage@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

Under the Animal Welfare Act (AWA or the Act, 7 U.S.C. 2131 *et seq.*), the Secretary of Agriculture is authorized to promulgate standards and other requirements governing the humane handling, care, treatment, and transportation of certain animals by dealers, exhibitors, operators of auction sales, research facilities, and carriers and intermediate handlers.

The Secretary has delegated responsibility for administering the AWA to the Administrator of the U.S. Department of Agriculture's (USDA's) Animal and Plant Health Inspection Service (APHIS). Within APHIS, the responsibility for administering the AWA has been delegated to the Deputy Administrator for Animal Care. Definitions, regulations, and standards established under the AWA are contained in 9 CFR parts 1, 2, and 3 (referred to below as the regulations).

Part 1 contains definitions for terms used in parts 2 and 3. Part 2 provides administrative regulations and sets forth institutional responsibilities for regulated parties. Part 3 provides standards for the humane handling, care, treatment, and transportation of covered animals. Part 4 addresses rules of practice governing proceedings under the AWA.

On September 17, 2020, APHIS announced in the **Federal Register** (85 FR 57998–58002, APHIS–2019–0001) [1] proposed changes to 9 CFR part 2 in order to address reforms called for in Title II, Section 2034(d) of the 21st Century Cures Act (21CCA). The 21CCA tasked the National Institutes of Health (NIH), the USDA, and the U.S. Food and Drug Administration (FDA) to identify inconsistent, overlapping, and unnecessarily duplicative regulations and policies associated with research using laboratory animals and to consider modifying, streamlining, or repealing those that are unnecessary or impose administrative burdens or excessive costs on regulated entities.[2] These changes will reduce or remove redundant registration, reporting, and review requirements of activities involving animals at AWA-registered research facilities while ensuring that research animals continue to receive humane care.

We solicited comments concerning our proposal for 60 days ending November 16, 2020. We received 61 comments by that date.[3] They were from animal welfare organizations; public and private universities, hospitals, and biomedical and other research institutions; a veterinary association; and members of the public. They are discussed below by topic.

Registration of Research Facilities

Section 2.30(a)(1) currently requires that each research facility other than a Federal research facility register with the Secretary by completing and filing an initial registration form.[4] Facilities are also required to update their registration every 3 years by filing a registration update form [5] with the registrant's name, address, and contact information; USDA registration certificate numbers; and names of partners, officers, and the Institutional Official (IO) as applicable.

We proposed to eliminate the requirement in § 2.30(a)(1) to update the research facility registration every 3 years after the facility's initial registration. We proposed this change because § 2.30(c)(1) already requires such a facility to notify APHIS within 10 days of any change in the name, address, ownership, or any other change in operations affecting its status as a research facility. We also considered the registration update to be unnecessary

[1] *https://www.federalregister.gov/documents/2020/09/17/2020-20512/awa-research-facility-registration-updates-reviews-and-reports.*

[2] Found at *https://www.congress.gov/bill/114th-congress/house-bill/34/.* An August 2019 report issued jointly by the NIH, the USDA, and the FDA, titled ''Reducing Administrative Burden for Researchers: Animal Care and Use in Research,'' is available at *https://olaw.nih.gov/sites/default/files/21CCA_final_report.pdf.* The report identifies ways in which Agencies can reduce regulatory and administrative burden consistent with requirements under the AWA.

[3] To view the proposal, supporting documents, and the comments we received, go to *www.regulations.gov.* Enter APHIS–2019–0001 in the Search field.

[4] APHIS Form 7011A: Application for Registration, New Registration.

[5] APHIS Form 7011: Application for Registration, Registration Update.

because name, address, contact information, and registration certificate numbers are included in the annual report[6] that facilities are required to submit to APHIS in accordance with § 2.36 of the regulations. Eliminating the registration update requirement reduces administrative burden on institutions, removes needless duplicative procedures for providing information, and is consistent with the reforms mandated in the 21CCA.

A commenter disagreed with eliminating the registration update and asked that we provide data to help them assess the basis for this proposed change, particularly how it addresses USDA's claim of needless duplication. The commenter also questioned whether research facilities were complying with the requirement to report changes in operations to APHIS within 10 days and suggested that rather than being a redundant requirement, the registration update is an opportunity for research facilities to make up for changes that they had not otherwise reported to APHIS.

The registration update is duplicative and therefore unnecessary because a facility is already required under § 2.30(c)(1) to provide this information whenever there is a change in the name, address, or ownership, or other change in operations affecting its status as a research facility. Regarding the question of whether facilities are complying with reporting requirements, our records indicate consistent and substantial compliance with the requirement to report changes to facility operations within 10 days of the changes. We disagree with the commenter's implication that research facilities use the registration update to report changes to operations, as the update form does not include fields for such data and APHIS would consider any such changes to be improperly submitted.

Notification of Change of Operation

As noted above, the current requirement in § 2.30(c)(1) for research facilities to notify the APHIS Animal Care Deputy Administrator in writing[7] of any change in the name, address, or ownership, or other change in operations affecting its status as a research facility within 10 days after making such a change would remain in the regulations. We proposed to add language to the requirement stating that a new Notification of Change form (APHIS Form 7033)[8] may be used to provide that information. In addition, we proposed to add a new provision to § 2.30 that clarifies the duration of a research facility's registration and conditions for its cancellation.

One commenter stated that eliminating the 3-year facility registration update form (APHIS Form 7011) and instead relying on the proposed APHIS Form 7033 risks losing certain information not required by the latter form, such as the checklist for the types of animals used at a facility. Other commenters stated that even though facilities are already required to notify APHIS within 10 days of any change in the name, address, or ownership, or any change in operations affecting its status as a research facility, facilities are not specifically required to let APHIS know of changes to types of animals used.

We disagree with the commenters. Neither the current registration update form nor the new change notification form is intended to capture changes to types of animals used. APHIS will continue to obtain detailed information about the types of animals used at facilities from the semiannual reviews and annual report, and through inspections of facilities during business hours.

Two commenters asked that APHIS clarify what constitutes a ''change of operations'' as the term appears in § 2.30(c)(1). One commenter added that it is unclear that any facility changes will compel the facility to complete APHIS Form 7033 or otherwise submit the required information without having more detail about what a change of operations means.

A change of operations includes any change affecting a facility's status as a research facility, including but not limited to whether the facility is conducting teaching, testing, or research activities using regulated species. Regarding the commenter's concern about research facilities completing proposed APHIS Form 7033, we note that under § 2.30(c)(1) they are already required to report changes in operations that affect their status as a research facility. The new form is intended to make it easier for facilities to provide the required information.

Duration of Registration and Conditions for Cancellation of a Registration

We noted in the proposed rule that a small number of research facilities become inactive each year. We determined that requiring inactive facilities to request inactive status and continue filing annual reports in accordance with § 2.30(c)(2) constitutes an unnecessary burden because these facilities are no longer using animals covered under the AWA or otherwise functioning as a research facility as the term is defined in § 1.1. For this reason, we proposed to remove the provisions requiring such facilities to request inactive status and file an annual report. Under the proposed change, facilities would no longer be identified as active or inactive, but instead be registered or unregistered. Accordingly, under proposed § 2.30(d)(1), a research facility that goes out of business or otherwise ceases to function as a research facility can request to have its registration canceled by writing to the Deputy Administrator.

Some commenters suggested that we revise the heading of proposed § 2.30(d) to read, ''Cancellation and Resumption of a Registration'' instead of ''Duration of a Registration and Conditions for Cancellation of a Registration'' to reflect more accurately the content of the paragraph.

We are making no changes in response to the commenters. The heading of paragraph (d) appropriately emphasizes the main point of the paragraph with respect to conditions of registration. We added the new paragraph to clarify the duration of a research facility's registration and conditions for its cancellation.

We proposed to add a provision in § 2.30(d)(2) stating that the Deputy Administrator may cancel a registration without a written request from the research facility, if he or she has reason to believe that a research facility has ceased to function as a research facility.

A commenter expressed concern about the provision that the Deputy Administrator may initiate a cancellation of a research facility's registration. The commenter noted that various reasons exist why a facility may choose to remain in active status without having animals, such as an inactive academic institution that has used non-covered species at one time and anticipates using covered species again. The commenter asked that we include language in the regulations explaining how a facility would provide this information if they chose to remain active.

We are making no changes in response to the commenter. Facilities would no longer be identified as having active or inactive status, but instead be either registered or unregistered. While facilities may have their reasons for wishing to remain in active status, one

[6] APHIS Form 7023: Annual Report of Research Facility.

[7] Send changes to USDA/APHIS/AC, 4700 River Road, Unit 84, Riverdale, MD 20737–1234, or email *animalcare@usda.gov.*

[8] While APHIS recommends use of Form 7033 for licensees and registrants, locally developed formats may also be used for submitting a notification of change if desired.

that ceases to function as a research facility, or has changed its method of operation so that it no longer uses, handles, or transports animals, does not need to be registered for regulatory purposes. Whenever it plans to resume activities as a research facility, the facility can submit a registration form in accordance with § 2.30(c)(3) at least 10 days prior to using, handling, or transporting animals again. We intend to provide for such a facility to be able to retain its previous registration number upon registering.

One commenter recommended that APHIS define the term ''evidence of business activity'' in greater detail.

We assume the commenter is referring to the phrase ''evidence of business inactivity'' we used in the preamble to the proposed rule when discussing duration of registration and conditions for cancellation. We noted in the preamble that such evidence of inactivity could include but not be limited to multiple unsuccessful attempts to contact the facility by phone or mail, or no activity apparent at the physical address listed in the registration.

A few commenters indicated that it is unclear how the USDA would formally notify the facility that their registration was under consideration to be cancelled or was actually cancelled. Another commenter suggested that APHIS should attempt to notify the facility with a letter stating that the registration will be canceled within a certain timeframe if there is no response challenging the cancellation. One commenter proposed that APHIS make at least four documented attempts to contact the facility, with the fourth being by certified mail, and allow four months for a response.

APHIS will make multiple attempts in writing and by phone during business hours to establish contact with a research facility before considering canceling its registration due to evidence of inactivity. Once we have determined that a facility is no longer functioning as a research facility as the term is defined in § 1.1, there is no regulatory need for the facility to remain registered.

Two commenters requested that the USDA provide a more tangible standard for cancelling a registration than ''has reason to believe.'' One commenter recommended that a potential standard could be when the Deputy Administrator ''has developed credible evidence that demonstrates a research facility has ceased to function as a research facility.''

In the preamble of the proposed rule, we explained that the Deputy Administrator may cancel a registration if sufficient evidence exists that a facility has ceased to function as a research facility. However, in the regulatory text of proposed § 2.30(d)(2), we used the words ''reason to believe.'' We agree with the commenter's suggestion that the language should be more tangible and will amend paragraph (d)(2) accordingly by replacing ''reason to believe'' with ''sufficient evidence showing''.

The same commenter asked that we include a provision by which a facility can contest or appeal the cancellation of a registration that it believes has been made in error.

We are making no changes in response to the commenter. APHIS will cancel a registration if the research facility requests it, or if we have sufficient evidence showing that a facility has ceased to function as a research facility. This evidence includes but is not limited to failure to submit an annual report or respond to multiple contact attempts. We note above that we will make several attempts in writing and by phone during business hours to establish contact with a facility before deciding to cancel its registration based on sufficient evidence of inactivity, so accordingly we see no need to include a provision to contest a cancellation. If a facility has questions about cancellations, they are encouraged to contact APHIS Animal Care.[9]

We included in proposed paragraph (d)(3) the provision that if a research facility registration has been canceled but the facility wishes to resume operations or otherwise conduct regulated activities in the future, it is responsible for submitting an application to reregister at least 10 days prior to it using, handling, or transporting animals. No fees would be associated with reregistration.

A commenter requested that the USDA streamline the registration process so that it may be consistently completed within 10 business days of receipt in order to ensure that reregistration does not jeopardize funding or research plans.

We acknowledge the commenter's request but are making no changes to the process. APHIS typically completes the process of registering a facility within 10 business days of receiving the application for registration and intends to continue doing so.

The commenter also asked that we outline the steps we will take to provide flexible options for electronic registration and other measures to ensure timely processing and notification of registration status.

We are currently developing an electronic registration option that will provide greater flexibility and efficiency for stakeholders. We will inform the regulated community when electronic registration is available and where to access it.

A commenter recommended that APHIS place limitations on reregistration by requiring that research facilities pay the costs of their reregistration. The commenter suggested that without such a fee, research facilities unable to comply consistently with the AWA could use the cancellation and reregistration processes to avoid being cited for noncompliance.

We are making no changes in response to the commenter's recommendation. The AWA is silent on authorizing the Secretary to charge a fee for registration. Regarding the commenter's concern, if a facility is out of compliance with the regulations or otherwise has pending citations, canceling its registration will neither cancel the citations nor eliminate the possibility of APHIS taking enforcement action, as enforcement is a process distinct from registration.

Proposed § 2.30(d)(3) includes registration requirements for formerly registered facilities wishing to resume regulated activity. A few commenters recommended revising § 2.30(d)(3) to read ''If a research facility plans to resume activity,'' presumably to replace ''If a research facility resumes operation or otherwise wishes to conduct regulated activities in the future . . . ''.

We did not intend to imply that formerly registered facilities could resume operation of regulated activities prior to registering again, so we agree with the language suggested by the commenters and will replace the proposed wording with ''plans to resume regulated activity'' in § 2.30(d)(3). We emphasize that unregistered facilities wishing to engage in regulated activities must submit APHIS Form 7011A at least 10 days prior to using, handling, or transporting animals. We intend to allow formerly registered facilities to retain their original registration number if they are registering again.

IACUC Facility Reviews

We noted in the proposed rule that § 2.31 requires the Institutional Animal Care and Use Committee (IACUC) for each registered research facility to assess the facility's animal program, facilities, and procedures and evaluate proposed research activities or

[9] USDA/APHIS/AC, 4700 River Road, Unit 84, Riverdale, MD 20737–1234, or email *animalcare@usda.gov.*

significant changes in ongoing activities related to the care, treatment, housing, and use of research animals. In accordance with this section, the IACUC reviews the research facility's programs and facilities to determine compliance with AWA and institutional requirements. The IACUC also reviews proposed animal research activities or significant changes to ongoing activities and notifies the principal investigator (PI) and the research facility of its decision to approve or withhold approval.

Section § 2.31(c)(1) requires the IACUC of each research facility to review, at least once every 6 months, the research facility's program for humane care and use of animals using the AWA regulations as a basis for evaluation. Under § 2.31(c)(2), the IACUC is also required to inspect all of the research facility's animal facilities, including animal study areas, again using the AWA regulations as a basis for evaluation. The IACUC reports the outcome of these semiannual evaluations to the Institutional Official of the research facility in accordance with requirements in § 2.31(c)(3). In addition, the IACUC's functions under § 2.31(c)(4) include reviewing and investigating reports of noncompliance received from facility personnel, as well as public complaints, involving the care and use of animals at the research facility. If noncompliance with the AWA is found during these reviews and inspections, the IACUC is authorized to require modifications or suspend an activity involving animals in accordance with the specifications set forth in § 2.31(d)(6).

In order to approve newly proposed research activities or proposed significant changes in ongoing activities, the IACUC is also required to conduct a review of components of the proposed activities or significant changes related to the care and use of animals and determine that they meet the requirements listed in § 2.31(d)(1). Once a research activity or a significant change to an ongoing activity has been approved, paragraph (d)(5) of this section requires the IACUC to conduct continuing reviews of activities covered under the regulations at 9 CFR 1.1, *et seq.,* at appropriate intervals as determined by the IACUC, but not less than annually.

We proposed to amend § 2.31(d)(5) by removing the continuing review requirement and adding the requirement for a complete review of activities at appropriate intervals as determined by the IACUC, but not less than every 3 years. As we noted in the proposed rule, we made this change in order to harmonize the USDA AWA regulations with the NIH requirement for a complete review of IACUC-approved activities at 3-year intervals.

Several commenters disagreed with our proposal to remove the continuing review requirement in § 2.31(d)(5) and add the requirement for a complete review. One commenter stated that an annual review of research activities and protocols is crucial to maintain transparency and accountability in animal research, and many expressed the view that these changes create too long of an interval between reviews to ensure animal welfare oversight. Another commenter stated that allowing IACUCs to conduct complete reviews ''at appropriate intervals'' no less than every 3 years would give IACUCs far too much leeway in reviewing activities and animal welfare oversight, and one stated that we provided no data to support a 3-year complete review, noting that it is unclear how the expanded review period comports with annual and semiannual inspections. One commenter stated that APHIS does not elucidate how it will ensure that the AWA standards of treatment will be adhered to with a relaxed review standard.

We acknowledge the concerns expressed by these commenters over whether IACUC reviews at research facilities are sufficiently frequent and thorough to ensure animal welfare. However, we emphasize that the two review types have different objectives, and that removing the continuing review and adding a complete review, as we have proposed, will actually enhance the thoroughness of review of animal activities with no effect on frequency and oversight—we explain this point below.

The purpose of the continuing review required in paragraph (d)(5) of the current regulations is not specified. In practice, however, it has consisted of the IACUC determining whether significant changes impacting animal welfare have occurred in a research activity since the time it was originally approved or last reviewed. We consider the continuing review to be redundant because, under § 2.31(c) and (d), any significant changes to an ongoing activity are already required to be reviewed by the IACUC. Further, the semiannual review of a research facility's program for humane care and use of animals covers animal use in all facility research activities to ensure that the approved activity continues to comply with regulatory and institutional requirements, and under paragraph (c)(3) any departures from the regulations found by the IACUC are required to be reported and addressed appropriately. In addition, under § 2.31(c)(4), the IACUC is required to review, and, if warranted, investigate complaints by the public or facility personnel involving the care and use of animals at the research facility at any time. Finally, removing the continuing review requirement has no effect on the IACUC approval process for new activities and significant changes to animal activities.

The complete review required by NIH at federally funded facilities involves a full evaluation of each new animal research activity—including all elements pertaining to animal welfare listed under § 2.31(d) and (e)—with resubmission and complete review of that activity every 3 years thereafter as if it were a new activity. The NIH requires the complete review of the entire activity protocol even if no significant changes have been made to it in that 3-year period, the rationale being that regulations or scientific developments germane to the activity may have changed during the period between reviews. The complete review does not affect the IACUC's authority under § 2.31(c)(3) to determine the best means of conducting the evaluations required by paragraphs (c)(1) and (2) of the facility's programs and facilities. A facility's programs include the animal activities, and the IACUC's evaluations required by paragraphs (c)(1) and (2) include monitoring after approval.

Based on the results of the complete review, the IACUC grants or withholds approval, or requires modifications to the activity. The purpose of the complete review is to ensure that all elements of animal use in a research activity, or changes to an ongoing activity, are humane and designed to minimize animal distress, and that alternatives to painful and distressing procedures have been considered and implemented to the extent possible.

We proposed harmonizing our review requirements with NIH by adding the complete review requirement because it ensures that every component in a research activity that uses animals is thoroughly evaluated. We note that under the current AWA regulations, no such equivalent review requirement exists. In other words, once approved, an animal research activity using AWA species that is not funded by the Public Health Service [10] can continue

[10] The Public Health Service is a collection of agencies with the Department of Health and Human Services that includes NIH. NIH requires that a complete IACUC review of research protocols be conducted at least once every 3 years for facilities conducting research funded by the Public Health Service.

indefinitely without ever being fully revisited to ensure its underlying design or foundational assumptions are in step with current science and regulatory policy relating to animal welfare. The continuous review was never intended to serve this purpose, as it involves only periodic checks sufficiently covered by other reviews discussed above.

For the complete review, the PI will provide the IACUC with a written description of all current activities that involve the care and use of animals for review and approval. Changes such as but not limited to personnel, species, study objectives, and frequency of sample collections may be reviewed by the IACUC as frequently as necessary, but not less than every 3 years.

A commenter expressed concern that any violation of IACUC-approved protocols, such as performing procedures on animals beyond what was initially approved or experiencing more animal mortalities than was initially approved, would not necessarily be brought to the attention of the IACUC until the 3-year review, by which time it could be too late to take appropriate action.

We note the commenter's concern but reiterate that, under § 2.31(c), the IACUC is required to review the research facility's program for humane care and use of animals at least once every 6 months, which includes animal use in all facility research activities, and under paragraph (c)(3) any departures from the regulations found by the IACUC at any time are required to be reported and addressed appropriately. The IACUC may approve, require modifications, or withhold approval of such changes, using the AWA regulations as the basis for its decision. Requirements for submitting a proposal to make significant changes to an ongoing activity are listed in § 2.31(e). Furthermore, the IACUC may review animal use in an ongoing activity at any time if there are indications that it deviates from initially approved procedures.

One commenter stated that an annual review is essential for ensuring that when new alternatives in animal use become available, the IACUC and the PI can promptly consider them. Similarly, several commenters noted that advances in scientific knowledge are emerging so quickly that refinements for improving the humane treatment of animals in research activities may go unused in the long period between reviews.

In the interim 3-year period before a complete review occurs, the semiannual review, and the IACUC review and approval process for significant changes, remain in place for raising concerns about changes in a scientific method or the existence of alternatives that reduce or replace live animal use. In addition, the Animal Welfare Information Center remains a resource for the PI to consult regarding the latest alternatives. The AWA regulations under § 2.32(c)(5) require training of PIs and other facility staff in using this resource or that of the National Library of Medicine. If the PI decides to implement an alternative in a research activity based on new knowledge, then he or she can submit an amendment to the IACUC for review and approval at any time.

Two commenters cited a 2014 audit report by the USDA Office of Inspector General (OIG) that found a substantial number of research facilities reviewed in fiscal years 2009–2011 misreported animal use and that IACUCs did not approve, monitor, or report adequately on experimental procedures on animals. Citing these issues in the OIG audit, the commenters indicated that a full IACUC continuing review on at least an annual basis is needed to ensure compliance and protect animals.

We acknowledge the conclusions of the audit report, in which USDA–OIG recommended that APHIS provide research facilities with training or best practice guidelines for IACUC protocol reviews and approvals regarding experimental procedures. As noted in the audit report, APHIS agreed with the OIG recommendation and has since developed guidance for research facilities on protocol review and approval, including updating the Animal Care Inspection Guide with additional guidance on IACUC best practices. In addition, NIH and APHIS formed the Interagency Collaborative Animal Research Education Project, which involves frequent trainings to empower IACUCs and their institutions to improve animal welfare and increase compliance with Federal standards.

We reiterate that eliminating the continuing review does not affect the frequency or depth of reviews required to ensure the humane care and use of animals, and that addition of the complete review further addresses the commenter's concerns.

A few commenters indicated that reducing the frequency of protocol review will diminish efforts to follow the ''Three R's''—reduction, refinement, replacement—thus undermining the spirit and intent of the independent policing inherent to the current AWA enforcement structure and limiting the IACUC's role.

We are making no changes in response to the comment. The IACUC's role is not limited or diminished as the result of removing the continuous review requirement, and addition of the complete review provides the committee with an additional strategy for ensuring animal welfare. We add that the IACUC has the authority to review the humane care and use of animals and all the research facility's animal facilities whenever deemed necessary to ensure compliance with the AWA.

A commenter stated that the proposed changes in review hamstring Congressional review and related agency reporting, as both reporting and funding may rely upon outdated data.

The annual continuing review is distinct from the annual report that facilities will still be required to submit to APHIS. The annual report provides data about the animals used by species and the level of pain and distress experienced during the annual reporting period. Furthermore, agency funding is not dependent on the annual report of animal use by research facilities.

One commenter stated that revising the review requirements lies outside the scope of the statutory source, explaining that APHIS does not explain whether the protection of animals would be adversely affected by reducing administrative burden in accordance with 2034(d) of the 21CCA.

We disagree with the commenter. The 21CCA tasked the NIH, in collaboration with the USDA and the FDA, to review regulations and policies for the care and use of laboratory animals and revise them appropriately to reduce administrative burden on investigators while maintaining the integrity and credibility of research findings and protection of research animals. The reduction in administrative burden will have no effect on animal welfare in research facilities, as there will be no change in the degree of IACUC and APHIS oversight.

A few commenters stated that harmonizing the IACUC review requirement with NIH requirements is insufficient to ensure animal welfare at research facilities, with one noting that serious animal welfare violations have been documented at NIH facilities in the past few years. Another commenter suggested that, instead of changing the USDA review, the NIH should conform to USDA's stronger annual review requirement. Another commenter stated that the proposal to align with the NIH review timeframe is based purely on convenience and is an inadequate reason to put animals in harm's way.

We reiterate that APHIS' addition of the complete review as a regulatory requirement ensures a thorough evaluation of research activity design and development with respect to

maintaining animal welfare and is independent of NIH oversight activities. Together with semiannual inspections, monitoring of animal activities at an interval deemed necessary for each facility, and investigation of complaints as warranted, the level of animal welfare oversight at facilities will not be diminished by this change.

Another commenter suggested changing the requirement to a 2-year or less review interval, explaining that it would relieve burden while matching the NIH requirement of a complete review of IACUC-approved activities.

We are making no changes in response to the commenter. In keeping with the reforms of the 21CCA, our proposed changes eliminate the redundancy of the continuous review while retaining the semiannual review. Regarding the complete review, we reiterate that the IACUC may choose to review ongoing activities more frequently than 3 years as part of a program review.

In the proposed rule, we noted that the complete review would result in approval of an activity using animals for an interval approved by the IACUC, not to exceed 3 years after the review, unless the IACUC suspends the activity for nonconformance with the description of that activity as provided by the PI and approved by the IACUC under § 2.31(d)(6).

A commenter stated that in addition to a protocol expiring after 3 years or being terminated, it is likely that research facilities have methods to terminate an approved IACUC protocol other than those cited in the regulations. The commenter noted as one example a voluntary termination by the PI or the IACUC for a reason other than that described in § 2.31(d)(6), or suspension by the IO.

We are making no changes in response to the comment. However, we acknowledge the commenter's point that a facility may choose to terminate a research activity voluntarily for reasons not included in the regulations.

A commenter suggested we consider the way protocols are renewed on an annual basis in Canada following a full review.

We are making no changes in response to the commenter. We note that under the regulations, research facilities are currently required to submit an annual report and under the proposed regulatory changes will undertake the 3-year complete review. Consistent with the aims of the 21CCA, this change harmonizes our review requirements with NIH requirements for Public Health Service-funded studies.

As a final note on our proposed addition of the complete review to § 2.31(d)(5), we are amending the language we originally proposed to read ''all activities'' instead of ''proposed activities'' pertaining to requirements for submitting written descriptions of activities to the IACUC involving the care and use of animals. This change more accurately reflects what we intended and reinforces commenter concerns that both proposed and ongoing activities involving animal care and use fall under the review requirement.

Annual Report Signature

We proposed to amend § 2.36(a) to eliminate the requirement for Chief Executive Officer (CEO) and IO signatures on a paper copy of the annual report. We noted that this guards against identity theft and allows for the facility representative to electronically submit the annual report on behalf of the CEO or IO while maintaining requirements for the facility annual report and practices. We also proposed to modify § 2.36(a) to inform registered research facilities and Federal research facilities that APHIS Forms 7023, 7023A, and 7023B may be used to submit the annual report information required in § 2.36(b).

Several commenters indicated that requiring the CEO or IO to sign the annual report makes them legally accountable and connected to the IACUC process and recommended against eliminating the requirement. One such commenter advised against eliminating the requirement for a signed paper copy of the report. Another commenter stated that, since the CEO or IO is ultimately responsible for making modifications to a facility and for ensuring that research protocols are modified as necessary for animal welfare purposes, his or her signature on the report confirms the awareness that such modifications are needed. The commenter added that if the annual report was submitted by the facility representative electronically, the CEO or IO may not be aware that modifications are needed for the facility to conform with the AWA. The commenter supported digital signature and electronic submission of the report but asked that we require CEO or IO signature.

We note that under the definition in § 1.1, the IO is the individual at a research facility who is authorized to legally commit on behalf of the research facility that the requirements of 9 CFR parts 1, 2, and 3 will be met. The IACUC is required to prepare a report of findings from the semiannual inspections to be given to the IO. The CEO and IO of the facility are legally responsible for facility and activity conformance with the AWA regardless of whether they actually sign the annual report.

Another commenter stated that changing the signature requirement is arbitrary and recommended against it, as APHIS does not consider its costs or alternatives to the revision.

We disagree that it is arbitrary because the change is consistent with the reforms called for in the 21CCA to reduce administrative burden. The costs of this change to the regulations are considered in the supporting economic analysis (see footnote 3 for a link to the analysis).

Other Comments

One commenter stated that IACUCs at taxpayer-funded State universities should open their meetings to the public.

This comment is beyond the scope of the rulemaking as we proposed no changes to IACUC meetings.

A commenter stated that we failed to show the cost savings to facilities of the proposed changes.

Information about costs can be found in the economic analysis prepared for this rulemaking.

Another commenter stated that cost savings and relief from regulatory burden would be achieved by moving away from animal experiments toward human-relevant research.

The comment is beyond the scope of this rulemaking as we did not address the topic of whether animal experimentation should be eliminated.

A commenter questioned whether the Secretary of Agriculture has the authority to delegate administration of the AWA to the APHIS Administrator. The commenter also stated that while the Administrative Procedure Act requires a ''reasoned explanation'' for finalizing proposed changes, the proposed rule does not explain how reducing duplicative requirements and administrative burden on research facilities, maintaining research integrity and oversight, and ensuring that research animals continue to receive humane care would result from the proposed provisions in the rule.

The delegation authority of the USDA Secretary is established by statute.[11] As for the relationship between reducing administrative burden while maintaining oversight and humane animal care, we respond that the reduction in burden does not impede current processes in place to ensure oversight, such as evaluating, at least

[11] 5 U.S.C. 302—Delegation of authority.

semiannually, the research facility's program for humane care and use of animals, conducting reviews as determined necessary, and investigating public complaints as warranted.

Miscellaneous

In parts 2, 3, and 4 of the current regulations, we proposed and are making minor corrections in punctuation and wording to improve readability. In paragraphs (f)(6) and (7) of § 3.111, we are removing extraneous punctuation and wording. In §§ 4.10 and 4.11, we are adding pronouns that are more inclusive.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities.The analysis is summarized below. Copies of the full analysis are available on the *Regulations.gov* website (see footnote 3 in this document for a link to *Regulations.gov*) or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

APHIS is amending five requirements in the following three sections of the Animal Welfare Regulations. The five amendments in these three sections are summarized as follows:

Section 2.30—Registration

- Paragraph (a)(1): Eliminate the requirement for research facility registration updates at 3-year intervals;
- Paragraph (c): Eliminate the requirement for a research facility to request being placed on inactive status if the facility has not used, handled, or transported animals for a period of at least 2 years;
- Paragraph (d): Clarify the duration of a registration and conditions for cancellation of a registration;

Section 2.31—IACUC

- Paragraph (d)(5): Replace continuing annual reviews of activities involving animals approved by the IACUC with reviews and approval by the IACUC at intervals not exceeding 3 years; and

Section 2.36—Annual Report

- Paragraph (a): Eliminate the requirement for Chief Executive Officer and Institutional Official signatures on the reporting facility annual report.

APHIS solicited public comments concerning these amendments for 60 days ending November 16, 2020 and received 61 comments. Three commenters raised concerns that were specific and relevant to the Initial Regulatory Flexibility Analysis (IRFA). The commenters expressed concern that the changes could compromise humane animal care at research facilities. Processes in place under the regulations by which IACUC monitors animal activities will not be affected by the changes. These processes include semiannual inspections and the authority to investigate any complaints where warranted under 9 CFR 2.31.

APHIS has quantified annual savings for facilities that total approximately $80,000 from the changes in § 2.30(a)(1) and approximately $11,000 from the change in § 2.36(a). APHIS also expects that the changes to § 2.30(c)(2) and (3) will reduce administrative burden of certain inactive research facilities. APHIS expects that the change in § 2.31(d)(5) will be cost neutral; no quantifiable public information is available to show expected net cost savings from the change.

These changes are intended to reduce administrative burden on investigators, IACUC members, attending veterinarians, and other related facility staff, and will not affect the Animal Welfare regulations that ensure humane animal care during research, testing, experiments, or teaching. Facilities covered by this final rule include small entities.

Based on our review of available information, the APHIS Administrator has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 2 CFR chapter IV.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. The Act provides administrative procedures which must be exhausted prior to a judicial challenge to the provisions of this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The information collection activities in this rule are approved under the Office of Management and Budget control number 0579–0036.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this rule, please contact Mr. Joseph Moxey, APHIS' Paperwork Reduction Act Coordinator, at (301) 851–2483.

List of Subjects

9 CFR Part 2

Animal welfare, Pets, Reporting and recordkeeping requirements, Research.

9 CFR Part 3

Animal welfare, Marine mammals, Pets, Reporting and recordkeeping requirements, Research, Transportation.

9 CFR Part 4

Administrative practice and procedure, Animal welfare.

Accordingly, we are amending 9 CFR parts 2, 3, and 4 as follows:

PART 2—REGULATIONS

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.7.

■ 2. Section 2.30 is amended as follows:
■ a. By revising paragraphs (a)(1) and (c);
■ b. By redesignating paragraph (d) as paragraph (e);
■ c. By adding a new paragraph (d); and
■ d. By adding a heading for newly redesignated paragraph (e).

The revisions and addition read as follows:

§ 2.30 Registration.

(a) * * *

(1) Each research facility, other than a Federal research facility, shall register with the Secretary by completing and filing a properly executed form which will be furnished, upon request, by the Deputy Administrator. The registration form shall be filed with the Deputy Administrator. Except as provided in

paragraph (a)(2) of this section, where a school or department of a university or college uses or intends to use live animals for research, tests, experiments, or teaching, the university or college rather than the school or department will be considered the research facility and will be required to register with the Secretary. An official who has the legal authority to bind the parent organization shall sign the registration form.

* * * * *

(c) *Notification of change of operation.* A research facility shall notify the Deputy Administrator in writing of any change in the name, address, or ownership, or other change in operations affecting its status as a research facility, within 10 days after making such change. The Notification of Change form (APHIS Form 7033) may be used to provide the information.

(d) *Duration of a registration and conditions for cancellation of a registration.* (1) A research facility that goes out of business or ceases to function as a research facility, or that changes its method of operation so that it no longer uses, handles, or transports animals, and does not plan to use, handle, or transport animals at any time in the future, may have its registration canceled by making a written request to the Deputy Administrator.

(2) If the Deputy Administrator has sufficient evidence showing that a research facility has ceased to function as a research facility, then the Deputy Administrator may cancel the registration on its own, without a written request from the research facility.

(3) If a research facility plans to resume regulated activity, the facility is responsible for submitting a form (APHIS Form 7011A) to reregister at least 10 days prior to it using, handling, or transporting animals. There are no fees associated with such reregistration.

(e) *Non-interference with APHIS officials.* * * *

■ 3. In § 2.31, paragraph (d)(5) is revised to read as follows:

§ 2.31 Institutional Animal Care and Use Committee (IACUC).

* * * * *

(d) * * *

(5) The IACUC shall conduct complete reviews of activities covered by this subchapter at appropriate intervals as determined by the IACUC, but not less than every 3 years. The complete review shall address all requirements related to the care and use of animals under paragraphs (d) and (e) of this section. The IACUC shall be provided a written description of all activities that involve the care and use of animals for review and approval at the end of the term.

* * * * *

■ 4. In § 2.36, paragraph (a) is revised to read as follows:

§ 2.36 Annual report.

(a) The reporting facility shall be that segment of the research facility, or that department, agency, or instrumentality of the United States that uses or intends to use live animals in research, tests, experiments, or for teaching. Each reporting facility shall submit an annual report to the Deputy Administrator on or before December 1 of each calendar year. The report shall cover the previous Federal fiscal year. The Annual Report of Research Facility (APHIS Form 7023), Continuation Sheet for Annual Report of Research Facility (APHIS Form 7023A), and Annual Report of Research Facility Column E Explanation (APHIS Form 7023B) are forms which may be used to submit the information required by paragraph (b) of this section.

* * * * *

PART 3—STANDARDS

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

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.7.

§ 3.111 [Amended]

■ 6. Section 3.111 is amended in paragraphs (f)(6) and (7) by removing ‘‘, which’’.

PART 4—RULES OF PRACTICE GOVERNING PROCEEDINGS UNDER THE ANIMAL WELFARE ACT

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

Authority: 7 U.S.C. 2149 and 2151; 7 CFR 2.22, 2.80, and 371.7.

§ 4.10 [Amended]

■ 8. In § 4.10, paragraph (a) is amended by removing the words ‘‘he’’ and ‘‘his’’ and adding the words ‘‘he or she’’ and ‘‘his or her’’ in its places, respectively.

§ 4.11 [Amended]

■ 9. In § 4.11, paragraph (a) introductory text is amended by removing the word ‘‘his’’ and adding the words ‘‘his or her’’ in its place.

Done in Washington, DC, this 18th day of November 2021.

Mark Davidson,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2021–25614 Filed 11–23–21; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2021–0135]

RIN 3150–AK68

List of Approved Spent Fuel Storage Casks: Holtec International HI-STAR 100 Cask System, Certificate of Compliance No. 1008, Renewal of Initial Certificate and Amendment Nos. 1, 2, and 3

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is confirming the effective date of December 15, 2021, for the direct final rule that was published in the **Federal Register** on October 1, 2021. This direct final rule amended the Holtec International HI-STAR 100 Cask System listing in the ‘‘List of approved spent fuel storage casks’’ to renew, for an additional 40 years, the initial certificate and Amendment Nos. 1, 2, and 3 of Certificate of Compliance No. 1008.

DATES: The effective date of December 15, 2021, for the direct final rule published October 1, 2021 (86 FR 54341) is confirmed.

ADDRESSES: Please refer to Docket ID NRC–2021–0135 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–2021–0135. Address questions about NRC dockets to Dawn Forder; telephone: 301–415–3407; email: *Dawn.Forder@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ‘‘Begin Web-based ADAMS Search.’’ For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The final certificates of compliance, final changes to the technical specifications, and final safety

evaluation report can also be viewed in ADAMS under Accession No. ML21316A192.

• *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Vanessa Cox, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–8342, email: *Vanessa.Cox@nrc.gov.*

SUPPLEMENTARY INFORMATION: On October 1, 2021 (86 FR 54341), the NRC published a direct final rule amending its regulations in part 72 of title 10 of the *Code of Federal Regulations* to revise the Holtec International HI-STAR 100 Cask System listing in the ''List of approved spent fuel storage casks'' to renew, for an additional 40 years, the initial certificate and Amendment Nos. 1, 2, and 3 of Certificate of Compliance No. 1008. The renewal of the initial certificate and Amendment Nos. 1, 2, and 3 of Certificate of Compliance No. 1008 revises the certificate of compliance's conditions and technical specifications to address aging management activities related to the structures, systems, and components of the dry storage system to ensure that these will maintain their intended functions during the period of extended storage operations. In the direct final rule, the NRC stated that if no significant adverse comments were received, the direct final rule would become effective on December 15, 2021. The NRC did not receive any comments on the direct final rule. Therefore, this direct final rule will become effective as scheduled.

Dated: November 18, 2021.

For the Nuclear Regulatory Commission.

Cindy K. Bladey,

Chief, Regulatory Analysis and Rulemaking Support Branch, Division of Rulemaking, Environmental, and Financial Support, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2021–25630 Filed 11–23–21; 8:45 am]

BILLING CODE 7590–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

RIN 3133–AF23

Chartering and Field of Membership—Shared Facility Requirements

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board (''Board'') is adopting a final rule amending its chartering and field of membership (''FOM'') rules to modernize requirements related to service facilities for multiple common bond (''MCB'') federal credit unions (''FCUs''). The final rule provides that shared locations are service facilities for purposes of MCB FCU additions of groups, regardless of whether the FCU has an ownership interest in the shared branching network providing the locations. Shared locations, including electronic facilities offering required services such as video teller machines, are also service facilities for purposes of MCB FCU additions of underserved areas, regardless of whether the FCU has an ownership interest. The final rule does not include other changes proposed to the definition of service facility; accordingly, ATMs continue to be excluded from the definition of service facility for additions of underserved areas.

DATES: This rule is effective December 27, 2021.

FOR FURTHER INFORMATION CONTACT: Elizabeth Wirick, Senior Staff Attorney, Office of General Counsel, at 1775 Duke Street, Alexandria, VA 22314 or telephone: (703) 518–6545.

SUPPLEMENTARY INFORMATION:

I. Proposed Rule
II. Legal Authority
III. Public Comments on the Proposed Rule and Final Rule
IV. Regulatory Procedures

I. Proposed Rule

The NCUA's Chartering and Field of Membership Manual, incorporated as Appendix B to part 701 of its regulations (''Chartering Manual'') [1] implements the FOM requirements and limitations established by the Federal Credit Union Act (''the Act'') [2] for FCUs. At its December 17, 2020, meeting, the Board approved a notice of proposed rulemaking to revise the Chartering Manual's definition of ''service facility.'' [3] The definition of ''service facility'' pertains to the addition of groups and underserved areas to the FOM of a MCB FCU, one of three types of FCU charters permitted under the Act. Among the Act's requirements for adding a group to a MCB FCU is that the credit union must be ''within reasonable proximity to the location of the group whenever practicable and consistent with reasonable standards for the safe and sound operation of the credit union.'' [4] Similarly, one of the Act's requirements for adding an underserved area to a MCB FCU is that ''the credit union establishes and maintains an office or facility'' in the underserved area.[5] The Chartering Manual implements these geographical requirements by limiting MCB FCUs to adding only groups that are within the service area of one of the FCU's service facilities and requiring MCB FCUs adding an underserved area to establish within two years, and maintain, an office or service facility in the underserved area.[6] As discussed in greater detail in the proposed rule, the Chartering Manual defines ''service facility'' differently for group additions and underserved area additions, requiring a higher level of services for service facilities in underserved areas.[7] Under the existing rule, ATMs do not qualify as service facilities for purposes of underserved area additions. The existing rule also requires that FCUs adding a group or an underserved area around a shared facility either have an ownership interest in the shared branching network providing the facility or that the shared facility is local to the FCU.[8]

The proposed rule would eliminate the ownership requirement for shared facilities, so that facilities of any shared branch network in which an FCU participates, regardless of ownership interest, would qualify as a service facility for the addition of groups or underserved areas. The proposed rule would also conform the definitions of service facility for group additions and underserved area additions, which would have resulted in ATMs, including shared ATMs, qualifying as service facilities for underserved area additions. Finally, the Board requested comments about whether the definition of service facility should further evolve to reflect the increasing role of

[1] 12 CFR part 701, Appendix B.

[2] 12 U.S.C. 1750 *et. seq.*

[3] 86 FR 1826 (Jan. 11, 2021), *https://www.govinfo.gov/content/pkg/FR-2021-01-11/pdf/2020-28277.pdf.*

[4] 12 U.S.C. (f)(1)(B).

[5] *Id.* 1759(c)(2)(B).

[6] Chartering Manual, §§ 2.IV.A.1.; 2.III.F.

[7] 86 FR 1826 (Jan. 11, 2021).

[8] Chartering Manual, App. 1, Glossary.

technology in the provision of financial services by permitting FCUs' interactive websites and mobile banking applications to be considered service facilities.

II. Legal Authority

The Board is issuing this rule pursuant to its authority under the FCU Act. Under the FCU Act, the NCUA is the chartering and supervisory authority for FCUs and the Federal supervisory authority for all federally insured credit unions (''FICUs'').[9] The FCU Act grants the Board a broad mandate to issue regulations governing both FCUs and FICUs. Section 120 of the FCU Act is a general grant of regulatory authority and authorizes the Board to prescribe rules and regulations for the administration of the FCU Act.[10]

The Act requires the Board to develop regulations to establish the criteria for additions of groups and requires the Board to approve an MCB FCU's addition of underserved areas.[11] The Act does not use the term ''service facility.'' Rather, the Board adopted the term ''service facility'' to define the limits of reasonable proximity.[12] As discussed in the proposed rule, the Act does not dictate the agency's prior position requiring ownership in a shared branching network or its current decision to continue excluding ATMs from the definition of service facility for purposes of underserved area expansion.

Agencies must ''use the same procedures when they amend or repeal a rule as they used to issue the rule in the first instance.'' [13] Accordingly, agencies cannot reverse rules adopted by notice-and-comment rulemaking by other, less transparent methods.[14] The term ''service facility'' appears in the Chartering Manual, which the Board has promulgated and amended using notice and comment rulemaking. The Board has engaged in notice and comment rulemaking to change its position regarding ownership requirements for shared branch networks.

[9] 12 U.S.C. 1752–1775.

[10] *Id.* 1766(a).

[11] *Id.* 1759(c); (d)(3).

[12] 63 FR 71998, 72002 (Dec. 30, 1998); 68 FR 18334, 18335 (April 15, 2003).

[13] *Perez* v. *Mortgage Bankers Ass'n,* 575 U.S. 92, 101 (2015).

[14] *Nat'l Family Planning and Reproductive Health Ass'n, Inc.* v. *Sullivan,* 979 F.2d 227, 236 (D.C. Cir. 1992). (''[The agency] may not constructively rewrite the regulation, which was expressly based upon a specific interpretation of the statute, through internal memoranda or guidance directives that incorporate a totally different interpretation and effect a totally different result''); *Clean Ocean Action* v. *York,* 57 F.3d 328 (3d Cir. 1995).

III. Public Comments on the Proposed Rule and Final Rule

The proposed rule provided for a 30-day public comment period, which closed on February 10, 2021. The NCUA received more than 700 comments on the proposed rule, 680 of which were identical or nearly identical form letters opposing the proposed rule. The form letter focused on opposing the proposed expansion of the definition of service facility to include ATMs in underserved areas and the request for comments on further expanding the definition of service facility. Of the 34 unique comments on the proposed rule, 21 commenters generally favored the rule and 13 commenters opposed it. Credit unions and related groups submitted the supportive comments, while banks, banking trade associations and individuals submitted the opposing comments, including the form letter.

A. Changes to the Definition of Service Facility for Purposes of Group Additions

Thirteen commenters specifically addressed the proposed removal of the ownership requirement for shared facilities, with ten supporting it and three opposed. The supportive comments echoed the Board's position in the proposed rule regarding the difficulty of obtaining ownership interests in some shared branching networks, the ongoing evolution in the delivery of financial services, and the fact that ownership, or lack thereof, of the entity offering the shared locations does not affect the services that members can receive at those locations. One commenter also noted that the costs of the shared facility ownership requirement might prevent smaller FCUs from being able to expand around shared locations. The opposing commenters, all banking trade associations, noted that relaxation of the ownership requirement would enable FCUs to expand nationwide. One opposing commenter also alleged that the Board did not sufficiently explain the reason for the change because consumers use ATMs the same way they did 20 years ago.

The Board is adopting the change to the service facility ownership requirement for group additions by MCB FCUs as proposed. The Board agrees with the commenters who note that the services available to credit union members are the same regardless of whether the credit union has an ownership interest in the facility. The Board also agrees that the ownership requirement has the potential to disadvantage smaller FCUs, for whom the investment necessary for ownership in a shared branching network may be cost-prohibitive. The Board does not dispute the opposing commenters' observation that permitting shared locations to qualify as service facilities enables MCB FCUs to add groups that may not have a location in reasonable proximity to a facility solely owned by and dedicated to a particular FCU. This potential, however, already exists under the current rule, except that only FCUs with the resources to invest in a shared branching network can utilize it. Far from being the ''red herring'' one commenter termed it, the barriers to using shared facilities to expand resulting from the ownership requirement are likely to fall most heavily on smaller, less resourced FCUs. Accordingly, the FCUs most likely to benefit from this change are precisely the type of community-based FCUs the opposing commenters indicate they prefer over what they term the ''large, growth-oriented credit unions.''

Finally, the Board disagrees with the commenter who said the proposed rule did not sufficiently explain why its position has changed, because the services consumers access through ATMs has not changed. As discussed in the proposed rule, the Board examined the statutory language and intent and determined that its prior interpretation, requiring an ownership interest, was not dictated by the Act.[15] As also discussed, changes to the structure of shared branching arrangements, as well as consumers' increasing comfort with using electronic facilities that may be distant from the physical location of their financial institution, prompted the Board to consider this change. Nor does the language in the legislative history encouraging NCUA to ''strongly favor placing groups with local credit unions'' [16] dictate an ownership requirement. An FCU can be local to the location of a group if it can serve members of the group desiring credit union services, and it can serve those members through a shared facility regardless of ownership.

The elimination of the ownership requirement in the final rule is analogous to the Board's approach to other components of the reasonable proximity requirement. For example, the Board has always taken the view that the ''reasonable proximity'' requirement has a geographic component, but as there is no statutory constraint on the specific distance, the Board has declined to establish a

[15] 86 FR 1826, 1827 (Jan. 11, 2021).

[16] H.R. Rept. No. 105–472, 105th Cong., 2nd Sess. (1998).

parameter not required by the Act.[17] In other words, despite some misconceptions in the past, there is no specific mileage limit or test to determine reasonable proximity. Similarly, the Board is now eliminating a requirement imposed by regulation that is not mandated by statute.

B. Change to the Definition of Service Facility for Purposes of Underserved Area Additions

For underserved areas, the current definition of ''service facility'' is more limited and allows fewer kinds of facilities to qualify. Specifically, for underserved areas, a service facility currently includes credit union-owned electronic facilities (other than ATMs) that take deposits, accept loan applications, and disburse loans.[18] Credit union branches, certain shared branches, mobile branches, and offices operated on a regularly scheduled weekly basis also meet the current criteria for a service facility in an underserved area expansion. Shared locations to which an FCU has access by virtue of participating in a shared branching network without an ownership interest do not meet the criteria for a service facility in an underserved area under the current rule. ATMs are also excluded, even if wholly owned by the FCU. The proposed rule would have changed the definition to allow all shared facilities, including ATMs, to qualify as service facilities, without any requirement for ownership in the shared facility.

The 680 form letter submissions as well as an additional 14 commenters opposed the addition of ATMs as service facilities for adding underserved areas. Opposing commenters stated the legislative history of this provision of the Act indicates that Congress did not intend for an ATM to qualify as a service facility for underserved areas and questioned whether an ATM could provide the level of service needed in underserved areas. Only 21 commenters favored this change; these commenters asserted that expanding the definition of service facility would allow more FCUs to serve underserved areas. The plain language of the Act does not prohibit including ATMs in the definition of service facility for underserved areas, and the Board agrees that expanding the definition of service facility to include ATMs would increase service to underserved areas. Nevertheless, after considering the comments and upon further review, the Board has determined to adopt only a portion of the proposed changes to the definition of service facility.

The final rule allows shared facilities, other than ATMs, to count as service facilities for underserved areas, provided the FCU's agreement with the shared branching network allows for the shared location to receive share deposits, accept loan applications, and disburse loan proceeds. Shared facilities which permit an FCU to offer these services may be service facilities in underserved areas, regardless of whether the FCU has an ownership interest in the entity providing the shared facility. An ownership interest in a shared facility for purposes of adding an underserved area is not required for the same reasons that an ownership interest in a shared facility for purposes of adding a group is not required.

The final rule, however, continues to impose additional requirements for service facilities in an underserved area. As in the existing rule, ATMs are not included in the definition of service facility. The final rule also retains the requirement in the current rule that a service facility for an underserved area must be a location that provides all three of the listed services—receiving shares for deposit, accepting loan applications, and disbursing loan proceeds. This means that, as stated in a 2012 Office of General Counsel Opinion Letter, so-called ''video teller machines'' that provide the above three services are service facilities for purposes of underserved areas, regardless of ownership.[19] The Board has determined this approach will allow more FCUs to offer services to underserved areas while still ensuring that members added in underserved areas receive a high level of services. The Board anticipates that this final rule could improve access to fair, safe and affordable financial services to individuals in underserved areas especially in minority and rural communities.

C. Change to the Definition of Service Facility in Chartering Manual Glossary

As discussed in the preamble to the proposed rule, the current definition for ''service facility'' in the Chartering Manual's glossary would benefit from clarification because it does not include a complete definition specific to each type of proposed FOM addition. Although the current definition references requirements for underserved area service facilities in the final sentence, it does not include the requirements for facilities in underserved areas to be a place where shares are accepted, loan applications are accepted, and loan proceeds are disbursed. The proposed rule would have conformed the definitions of service facility and removed this source of confusion. As noted above, however, the Board determined to retain the existing requirements related to service facilities for underserved areas, so the definition of service facility continues to depend on the context.

The definition of service facility in the Chartering Manual glossary in the final rule reflects the elimination of the ownership requirements for shared facilities. It also now more fully captures the additional requirements for service facilities in underserved areas by incorporating the complete definition of service facility for the purposes of underserved area additions from Chapter 3 of the Chartering Manual.

D. Additional Request for Comment

The proposed rule also requested comments on the general issue of whether the Board's definitions of terms like ''service facility'' should further evolve to include a credit union's transactional website and mobile banking applications. This was another area of focus for the form letter, so the vast majority of commenters opposed consideration of such a change. No regulatory changes were proposed in this regard, and the Board is not contemplating further action on this issue at this time. However, the Board is mindful of the increased usage of digital banking platforms by credit union members and will continue to monitor the situation.

IV. Regulatory Procedures

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities. A regulatory flexibility analysis is not required, however, if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (defined for purposes of the RFA to include FICUs with assets less than $100 million) and publishes its certification and a short, explanatory statement in the **Federal Register** together with the rule.

[17] OGC Op. ''Reasonable Proximity Analysis'' (June 10, 2020), *https://www.ncua.gov/regulation-supervision/legal-opinions/2021/reasonable-proximity-analysis.*

[18] Id. § 3.III.F.

[19] OGC Op. No. 11–0965 (Aug. 2012), *https://www.ncua.gov/regulation-supervision/legal-opinions/2012/video-teller-machine.*

The final rule changes the criteria for service facilities of MCB FCUs by eliminating the ownership requirement for shared facilities. As of June 30, 2021, there are 1,342 MCB FCUs, of which 933 have assets less than $100 million. Of these 933 MCB FCUs with assets less than $100 million, 243 are already participating in a shared branching network. This means that the remaining 690 MCB FCUs under $100 million may have additional incentive to participate in shared branching, as they will be able to use shared locations as a basis for expanding their FOM to additional groups or underserved areas regardless of ownership.

The ability to add additional members will not have a significant impact on small FCUs. The negative effect on small FCUs whose members gain eligibility for membership in another credit union under these changes is also likely minimal. Although this rule is anticipated to economically benefit FCUs that choose to expand their FOMs, NCUA certifies that it will not have a significant economic impact on a substantial number of small credit unions.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency from the public before they can be implemented.[20] The NCUA may not conduct or sponsor, and the respondent is not required to respond to an information collection unless it displays a valid OMB control number.

In accordance with the PRA, the information collection requirements included in this final rule has been submitted to OMB for approval under control number 3133–0015.

C. Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, the NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This rulemaking will not have a substantial direct effect on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The NCUA has determined that this final rule does not constitute a policy that has federalism implications for purposes of the executive order.

D. Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this final rule will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act, 1999.[21]

E. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) generally provides for congressional review of agency rules.[22] A reporting requirement is triggered in instances where the NCUA issues a final rule as defined by section 551 of the Administrative Procedure Act.[23] An agency rule, in addition to being subject to congressional oversight, may also be subject to a delayed effective date if the rule is a ''major rule.'' The NCUA does not believe this rule is a ''major rule'' within the meaning of the relevant sections of SBREFA. As required by SBREFA, the NCUA has submitted this final rule to the Office of Management and Budget (''OMB'') for it to determine if the final rule is a ''major rule'' for purposes of SBREFA. The NCUA also will file appropriate reports with Congress and the Government Accountability Office so this rule may be reviewed.

List of Subjects in 12 CFR Part 701

Credit, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on November 18, 2021.

Melane Conyers-Ausbrooks,

Secretary of the Board.

For the reasons stated above, the Board amends 12 CFR part 701 as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

■ 1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1758, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1785, 1786, 1787, 1788, 1789. Section 701.6 is also authorized by 15 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.;* 42 U.S.C. 1981 and 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

■ 2. In appendix B to part 701, revise chapter 2 section IV.A.1, chapter 3 section III.F, and the entry for ''service facility'' in appendix 1 glossary to read as follows:

Appendix B to Part 701—Chartering and Field of Membership Manual

* * * * *

Chapter 2—Field of Membership Requirements for Federal Credit Unions

* * * * *

IV—Multiple Occupational/Associational Common Bonds

IV.A.1—General

A federal credit union may be chartered to serve a combination of distinct, definable single occupational and/or associational common bonds. This type of credit union is called a multiple common bond credit union. Each group in the field of membership must have its own occupational or associational common bond. For example, a multiple common bond credit union may include two unrelated employers, or two unrelated associations, or a combination of two or more employers or associations. Additionally, these groups must be within reasonable geographic proximity of the credit union. That is, the groups must be within the service area of one of the credit union's service facilities. These groups are referred to as select groups. A multiple common bond credit union cannot include a TIP or expand using single common bond criteria.

Employment in a corporation or other legal entity which is related to another legal entity (such as a company under contract to, and possessing a strong dependency relationship with, the other company) makes that person part of the occupational common bond of a select employee group within a multiple common bond. In this context, a ''strong dependency relationship'' is a relationship in which the entities rely on each other as measured by a pattern of regularly doing business with each other, for example, as documented by the number, the term length, and the dollar volume of prior and pending contracts between them.

A multiple common bond credit union's charter may also combine individual occupational groups that each consist of employees of a retailer or other business tenant of an industrial park, a shopping mall, office park or office building (each ''a park''). To be able to have this type of clause in its charter, the multiple common bond credit union first must receive a request from an authorized representative of the group or the park to establish credit union service. The park must be within the multiple common bond credit union's service area, and each occupational group must have fewer than 3,000 employees, who are eligible for membership only for so long as each is employed by a park tenant. Under this clause, a multiple common bond credit union can enroll group employees only while the group's retail or business employer is a park tenant, but such credit unions are free to serve employees of new groups under the above conditions as each respective employer becomes a park tenant.

[20] 44 U.S.C. 3507(d); 5 CFR part 1320.

[21] Public Law 105–277, 112 Stat. 2681 (1998).

[22] Public Law 104–121, 110 Stat. 147 (1996).

[23] 5 U.S.C. 551.

A federal credit union's service area is the area that can reasonably be served by the service facilities accessible to the groups within the field of membership. The service area will most often coincide with that geographic area primarily served by the service facility. Additionally, the groups served by the credit union must have access to the service facility. The non-availability of other credit union service is a factor to be considered in determining whether the group is within reasonable proximity of a credit union wishing to add the group to its field of membership.

A service facility for multiple common bond credit unions is defined as a place where shares are accepted for members' accounts, loan applications are accepted, or loans are disbursed. This definition includes a credit union-owned branch, a mobile branch, an office operated on a regularly scheduled weekly basis, a credit union-owned ATM, or a credit union-owned electronic facility that meets, at a minimum, these requirements. A service facility also includes a shared branch or a shared branch network location, including a shared ATM or electronic facility that meets the above requirements, if the credit union participates in a shared branching network. This definition does not include the credit union's internet website.

The select group as a whole will be considered to be within a credit union's service area when:

- A majority of the persons in a select group live, work, or gather regularly within the service area;
- The group's headquarters is located within the service area; or
- The group's ''paid from'' or ''supervised from'' location is within the service area.

* * * * *

Chapter 3—Low-Income Credit Unions and Credit Unions Serving Underserved Areas

* * * * *

III.F—Service Facility

Once an ''underserved area'' has been added to a federal credit union's field of membership, the credit union must establish within two years, and maintain, an office or service facility in the community. A service facility is defined as a place where shares are accepted for members' accounts, loan applications are accepted and loans are disbursed. By definition, a service facility includes a credit union-owned branch, a shared branch, a mobile branch, an office operated on a regularly scheduled weekly basis, or a credit union-owned electronic facility that meets, at a minimum, the above requirements. A service facility also includes a shared branch or a shared branch network location, including an electronic facility that meets the above requirements, if a credit union participates in a shared branching network.

This definition does not include an ATM or the credit union's internet website.

* * * * *

APPENDIX 1 GLOSSARY

* * * * *

Service facility—A place where shares are accepted for members' accounts, loan applications are accepted or loans are disbursed. This definition includes a credit union-owned branch, a mobile branch, an office operated on a regularly scheduled weekly basis, a credit union-owned ATM, or a credit union-owned electronic facility that meets, at a minimum, these requirements. A service facility also includes a shared branch or a shared branch network location, including a shared ATM or other electronic facility, if a credit union participates in a shared branching network. For purposes of serving an underserved area: (1) A service facility is a place where shares are accepted for members' accounts, loan applications are accepted, and loans are disbursed; and (2) a service facility does not include an ATM or shared ATM.

The credit union's internet website is not a service facility.

* * * * *

[FR Doc. 2021–25609 Filed 11–23–21; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0262; Project Identifier AD–2020–00815–T; Amendment 39–21796; AD 2021–22–23]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all The Boeing Company Model 757–200, –200PF, –200CB, and –300 series airplanes. This AD was prompted by crack indications found in the lower aft wing skin bolt holes where the flap tracks attach to the track support fitting; this finding was on a Model 737–300 series airplane, which has a design similar to the Model 757 airplanes. This AD requires repetitive high frequency eddy current (HFEC) inspections for cracking of the lower aft wing skin aft edge at certain flap tracks, and repair if necessary. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective December 29, 2021.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of December 29, 2021.

ADDRESSES: For Boeing service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* For Aviation Partners Boeing service information identified in this final rule, contact Aviation Partners Boeing, 2811 S 102nd Street, Suite 200, Seattle, WA 98168; telephone: 206–830–7699; internet: *https://www.aviationpartnersboeing.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0262.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0262; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: David Truong, Aerospace Engineer, Airframe Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5224; email: *david.truong@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all The Boeing Company Model 757–200, –200PF, –200CB, and –300 series airplanes. The NPRM published in the **Federal Register** on April 9, 2021 (86 FR 18482). The NPRM was prompted by crack indications found in the lower aft wing skin bolt holes where the flap tracks attach to the track support fitting. In the NPRM, the FAA proposed to require repetitive HFEC inspections for cracking of the lower aft wing skin aft edge at certain flap tracks, and repair if necessary. The FAA is issuing this AD to address undetected cracking in the lower aft wing skin, which could result in the inability of the structure to carry limit load and could adversely affect the structural integrity of the airplane.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from five commenters, including Aviation Partners Boeing, Delta Air Lines, United Airlines, FedEx, and Boeing. The following presents the comments received on the NPRM and the FAA's response to each comment.

Request for Correction of Typographical Error

Aviation Partners Boeing (APB) and Delta Air Lines (DAL) requested that references to ''Aviation Partner Boeing'' at several places in the proposed AD be corrected to ''Aviation Partners Boeing.'' APB noted that this typographical error appeared in paragraphs (g)(2), (h)(3), and (h)(4) of the proposed AD. DAL also noted the typographical error in the ''Related Service Information Under 1 CFR Part 51'' section of the proposed AD.

The FAA acknowledges the error and has corrected those references in this AD at the places noted.

Request for Revision of Required Actions Paragraph

DAL requested that the qualifying statement of paragraph (g)(2) of the proposed AD be revised or greater clarity added to paragraphs (g)(1) and (2) of the proposed AD regarding the status of aircraft modified in accordance with Aviation Partners Boeing Service Bulletin AP757–57–001, Revision 1, dated May 18, 2012, which removes winglets installed per supplemental type certificate (STC) ST01518SE. DAL stated that, because the compliance times for aircraft affected by Aviation Partners Boeing Alert Service Bulletin AP757–57–011, dated August 21, 2020, are shortened and additional inspection areas included, it is unlikely that accomplishment of Aviation Partners Boeing Service Bulletin AP757–57–001, Revision 1, dated May 18, 2012, would restore the aircraft to a configuration that could use the inspection times and locations defined in paragraph (g)(1) of the proposed AD, even though they would no longer be regarded as having blended winglets or scimitar blended winglets installed.

The FAA agrees with the request to revise the qualifying statement of paragraph (g)(2) of this AD. For aircraft modified in accordance with STC ST01518SE that subsequently have the STC winglets removed by Aviation Partners Boeing Service Bulletin AP757–57–001, Revision 1, dated May 18, 2012, the wing modification does not get removed, therefore Aviation Partners Boeing Alert Service Bulletin AP757–57–011, dated August 21, 2020, would still be applicable. The qualifying statement of paragraph (g)(2) of this AD has been changed to read, ''For airplanes on which Aviation Partners Boeing blended winglets or scimitar blended winglets are installed using STC ST01518SE, or on which such winglets have been installed and subsequently removed.''

Request To Clarify Source of Findings

Boeing requested that the Summary and paragraph (e) of the proposed AD be rewritten to clarify that the unsafe condition prompting the proposed AD was not discovered on a Model 757 airplane. The commenter stated that the subject sentence may be misleading as is. Boeing noted that crack indications were found in a Model 737–300 airplane, which has a similar configuration to the Model 757 airplane in this area, but there are no reports of cracking in the area for a Model 757 airplane.

The FAA agrees with the request to clarify. The suggested clarification has been added to the Summary and paragraph (e) of this AD.

Request To Confirm Inspection Effectiveness

FedEx requested confirmation that the HFEC inspection described in Boeing Alert Service Bulletin 757–57A0074, dated June 11, 2020, will be sufficient to detect the described unsafe condition. FedEx noted that the proposed AD is based on a crack originating from a fastener hole. FedEx stated that, due to the relatively low depth penetration of HFEC, the inspection specified in the service information will not likely detect a crack until it has propagated through to the free edge of the lower aft wing skin.

The FAA has determined that the HFEC inspection will be sufficient to detect the unsafe condition. This is a proactive AD for the 757 fleet, based on a crack finding in a Model 737 airplane with a similar design. The unsafe condition exists when a fastener hole crack reaches the lower aft wing skin aft edge. Crack growth analysis has determined that the existing structural integrity of the Model 757 airplanes in this area is such that HFEC inspections at the intervals specified in the applicable service information would be able to detect a crack propagating from a fastener hole to the lower aft wing skin aft edge.

Request To Modify Proposed AD Requirements Paragraph

Boeing requested that the APB service information be added to the ''Proposed AD Requirements in This NPRM'' section of the NPRM. The commenter stated that the addition of the APB bulletin information in the statement would inform the reviewer of all applicable service information addressed by the proposed AD.

The FAA agrees that APB service information should have been included in the referenced section of the NPRM. However, the referenced section does not appear in this final rule. This AD has not been changed with regard to this request.

Request To Clarify Intent of Note

Boeing requested that ''Note 1 to paragraph (g)'' be changed to ''Note 1 to paragraph (g)(1)'' because as worded it implies that the Boeing service bulletin gives additional guidance for the APB bulletin, but it only gives additional guidance for the specified Boeing requirements bulletin.

The FAA agrees and has made the specified change.

Request To Modify Related Service Information Paragraph

United Airlines, DAL, and Boeing asked that the Related Service Information under 1 CFR part 51 paragraph be clarified to include HFEC inspections at flap track numbers 1 and 8 for aircraft with blended winglets or scimitar blended winglets. The commenters stated that the APB service bulletin requires additional inspections other than those required in the Boeing requirements bulletin. DAL noted that if the intent is to not require inspections at flap track numbers 1 and 8, paragraph (h) of the proposed AD should be revised to clarify that intent.

The FAA agrees with the request and notes that the intent is to require inspections at all flap track numbers specified in the applicable service information. The FAA has revised the ''Related Service Information Under 1 CFR Part 51'' section of this AD accordingly. The FAA has also revised the ''Costs of Compliance'' section to clarify the difference in work hours between the two bulletins.

Conclusion

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

increase the economic burden on any operator.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin 757–57A0074 RB, dated June 11, 2020. This service information specifies procedures for repetitive HFEC inspections for cracking of the lower aft wing skin aft edge at flap track numbers 2 and 7 attachment locations, and repair. The FAA also reviewed Aviation Partners Boeing Alert Service Bulletin AP757–57–011, dated August 21, 2020, which specifies procedures for repetitive HFEC inspections for cracking of the lower aft wing skin aft edge at flap track numbers 1, 2, 7, and 8 attachment locations, and repair. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

Costs of Compliance

The FAA estimates that this AD affects 483 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Repetitive inspections (per Boeing bulletin).	2 work-hours × $85 per hour = $170 per inspection cycle.	$0	$170 per inspection cycle	Up to $82,110 per inspection cycle.
Repetitive inspections (per APB bulletin).	3 work-hours × $85 per hour = $255 per inspection cycle.	0	$255 per inspection cycle	Up to $123,165 per inspection cycle.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2021–22–23 The Boeing Company: Amendment 39–21796; Docket No. FAA–2021–0262; Project Identifier AD–2020–00815–T.

(a) Effective Date

This airworthiness directive (AD) is effective December 29, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model 757–200, –200PF, –200CB, and –300 series airplanes, certificated in any category.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by crack indications found in the lower aft wing skin bolt holes where the flap tracks attach to the track support fitting; this finding was on a Model 737–300 series airplane, which has a similar design to the Model 757 airplanes. The FAA is issuing this AD to address undetected cracking in the lower aft wing skin, which could result in the inability of the structure to carry limit load and could adversely affect the structural integrity of the airplane.

(f) Compliance

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

(g) Required Actions

(1) For all airplanes except those identified in paragraph (g)(2) of this AD: Except as specified by paragraph (h) of this AD, at the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 757–57A0074 RB, dated June 11, 2020, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 757–57A0074 RB, dated June 11, 2020.

Note 1 to paragraph (g)(1): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 757–57A0074, dated June 11, 2020, which is referred to in Boeing Alert Requirements Bulletin 757–57A0074 RB, dated June 11, 2020.

(2) For airplanes on which Aviation Partners Boeing blended winglets or scimitar blended winglets are installed using supplemental type certificate (STC) ST01518SE, or on which they have been installed and subsequently removed: Except as specified by paragraph (h) of this AD, at the applicable times specified in paragraph 1.E., ''Compliance'' of Aviation Partners Boeing Alert Service Bulletin AP757–57–011, dated August 21, 2020, do all applicable actions identified as ''RC'' (required for compliance) in, and in accordance with, the Accomplishment Instructions of Aviation

Partners Boeing Alert Service Bulletin AP757–57–011, dated August 21, 2020.

(h) Exceptions to Service Information Specifications

(1) Where Boeing Alert Requirements Bulletin 757–57A0074 RB, dated June 11, 2020, uses the phrase ''the original issue date of Requirements Bulletin 757–57A0074 RB,'' this AD requires using ''the effective date of this AD.''

(2) Where Boeing Alert Requirements Bulletin 757–57A0074 RB, dated June 11, 2020, specifies contacting Boeing for repair instructions: This AD requires doing the repair before further flight using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

(3) Where Aviation Partners Boeing Alert Service Bulletin AP757–57–011, dated August 21, 2020, uses the phrase ''the original issue date of this service bulletin,'' this AD requires using ''the effective date of this AD.''

(4) Where Aviation Partners Boeing Alert Service Bulletin AP757–57–011, dated August 21, 2020, specifies contacting Boeing for repair instructions: This AD requires doing the repair before further flight using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

(i) Alternative Methods of Compliance (AMOCs)

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

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

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

(j) Related Information

For more information about this AD, contact David Truong, Aerospace Engineer, Airframe Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5224; email: *david.truong@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) Aviation Partners Boeing Alert Service Bulletin AP757–57–011, dated August 21, 2020.

(ii) Boeing Alert Requirements Bulletin 757–57A0074 RB, dated June 11, 2020.

(3) For Boeing service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* For Aviation Partners Boeing service information identified in this AD, contact Aviation Partners Boeing, 2811 S. 102nd Street, Suite 200, Seattle, WA 98168; telephone: 206–830–7699; internet: *https://www.aviationpartnersboeing.com.*

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

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

Issued on October 22, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–25533 Filed 11–23–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–1009; Project Identifier MCAI–2021–01173–R; Amendment 39–21827; AD 2021–24–06]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus Helicopters Model EC130T2 helicopters. This AD was prompted by a report of degradation of the rear transmission shaft bearing support and the determination that all of the attachment rivets of the transmission shaft bearing support were sheared. This AD requires repetitive visual inspections of the rivets on the rear transmission shaft bearing support and of the local structure for cracking and missing, loose, or sheared rivets and accomplishment of applicable corrective actions, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD becomes effective December 9, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of December 9, 2021.

The FAA must receive comments on this AD by January 10, 2022.

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

For EASA material incorporated by reference (IBR) in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu*; internet *www.easa.europa.eu*. You may find this IBR material on the EASA website at *https://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. It is also available in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–1009.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–1009; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the EASA AD, any comments received, and other information. The street address for Docket Operations is

listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA Emergency AD 2021–0235–E, dated October 28, 2021 (EASA AD 2021–0235–E), to correct an unsafe condition for Airbus Helicopters (formerly Eurocopter) Model EC 130 T2 helicopters, all serial numbers, on which Airbus Helicopters Modification 074581 has been embodied in production.

This AD was prompted by a report of degradation of the rear transmission shaft bearing support on a Model EC130T2 helicopter and the determination that all of the attachment rivets of the transmission shaft bearing support were sheared. The investigation is still on-going to identify the root cause of this degradation. The FAA is issuing this AD to address sheared attachment rivets of the transmission shaft bearing support. This condition, if not addressed, could lead to failure of the tail rotor drive shaft and subsequent loss of yaw control of the helicopter. See EASA AD 2021–0235–E for additional background information.

Related Service Information Under 1 CFR Part 51

EASA AD 2021–0235–E requires repetitive visual inspections of the rivets on the rear transmission shaft bearing support and of the local structure for cracking and, if any rivet on the rear transmission bearing support is missing, loose, or sheared, or any visible crack is present, accomplishment of applicable corrective actions (*e.g.,* repair).

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

FAA's Determination

These helicopters have been approved by the aviation authority of another country and are 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 its AD. The FAA is issuing this AD after evaluating all pertinent information and determining that the unsafe condition exists and is likely to exist or develop on other helicopters of the same type design.

Requirements of This AD

This AD requires accomplishing the actions specified in EASA AD 2021–0235–E, described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this 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, EASA AD 2021–0235–E will be incorporated by reference in this FAA final rule. This AD would, therefore, require compliance with EASA AD 2021–0235–E in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this AD. Using common terms that are the same as the heading of a particular section in EASA AD 2021–0235–E 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 2021–0235–E. Service information referenced in EASA AD 2021–0235–E for compliance will be available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–1009.

Interim Action

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

Justification for Immediate Adoption and Determination of the Effective Date

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) authorizes agencies to dispense with notice and comment procedures for rules when the agency, for ''good cause,'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under this section, an agency, upon finding good cause, may issue a final rule without providing notice and seeking comment prior to issuance. Further, section 553(d) of the APA authorizes agencies to make rules effective in less than thirty days, upon a finding of good cause.

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies foregoing notice and comment prior to adoption of this rule because sheared attachment rivets of the transmission shaft bearing support could lead to failure of the tail rotor drive shaft and subsequent loss of yaw control of the helicopter. In addition, the compliance time for the required action is shorter than the time necessary for the public to comment and for publication of the final rule. The initial visual inspection of the rivets on the rear transmission shaft bearing support and of the local structure for cracking and missing, loose, or sheared rivets must be accomplished before next flight or within seven days after the effective date of this AD, whichever occurs first. Accordingly, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B).

In addition, the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days, for the same reasons the FAA found good cause to forego notice and comment.

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2021–1009; Project Identifier MCAI–2021–01173–R'' at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, 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 final rule 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 *https://www.regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this final rule.

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 AD 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 AD, 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 AD. Submissions containing CBI should be sent to Andrea Jimenez, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (516) 228–7330; email *andrea.jimenez@faa.gov*. Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Regulatory Flexibility Act

The requirements of the Regulatory Flexibility Act (RFA) do not apply when an agency finds good cause pursuant to 5 U.S.C. 553 to adopt a rule without prior notice and comment. Because the FAA has determined that it has good cause to adopt this rule without notice and comment, RFA analysis is not required.

Costs of Compliance

The FAA estimates that this AD affects 64 helicopters of U.S. Registry. The FAA estimates the following costs to comply with this AD.

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	0.50 work-hour × $85 per hour = $42.50 per inspection cycle.	$0	$42.50 per inspection cycle	$2,720 per inspection cycle.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed, I certify that this AD:

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2021–24–06 Airbus Helicopters: Amendment 39–21827; Docket No. FAA–2021–1009; Project Identifier MCAI–2021–01173–R.

(a) Effective Date

This airworthiness directive (AD) is effective December 9, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Helicopters Model EC130T2 helicopters, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) Emergency AD 2021–0235–E, dated October 28, 2021 (EASA AD 2021–0235–E).

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a report of degradation of the rear transmission shaft bearing support and the determination that all of the attachment rivets of the transmission shaft bearing support were sheared. The FAA is issuing this AD to address sheared attachment rivets of the transmission shaft bearing support. This condition, if not addressed, could lead to failure of the tail rotor drive shaft and subsequent loss of yaw control of the helicopter.

(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, EASA AD 2021–0235–E.

(h) Exceptions to EASA AD 2021–0235–E

(1) Where EASA AD 2021–0235–E refers to its effective date, this AD requires using the effective date of this AD.

(2) Where paragraph (1) of EASA AD 2021–0235–E requires doing an inspection after each last flight of the day or ''ALF,'' this AD requires doing that inspection before each first flight of the day.

(3) Where paragraph (2) of EASA AD 2021–0235–E requires, if any rivet on the rear transmission bearing support is found missing, loose or sheared, or any visible crack is present, contacting Airbus Helicopters to obtain approved repair instructions and accomplishing those instructions, this AD requires doing a repair

in accordance with an FAA-approved method.

(4) Where the service information referenced in EASA AD 2021–0235–E specifies that the inspection can be done by a mechanical technician, a pilot with correct training and accreditation, or a pilot-owner, this AD requires that the inspection be done by a qualified mechanic.

(5) This AD does not mandate compliance with the ''Remarks'' section of EASA AD 2021–0235–E.

(6) Where paragraph (1) of EASA AD 2021–0235–E requires doing inspections of the rivets for presence of cracks, for this AD, inspect for visible cracks and missing, loose, or sheared rivets.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2021–0235–E specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Special Flight Permit

Special flight permits may be permitted provided that there are no passengers on board.

(k) Alternative Methods of Compliance (AMOCs)

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

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

(l) Related Information

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

(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 this AD specifies otherwise.

(i) European Union Aviation Safety Agency (EASA) Emergency AD 2021–0235–E, dated October 28, 2021.

(ii) [Reserved]

(3) For EASA AD 2021–0235–E, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu*; internet *www.easa.europa.eu*. You may find the EASA material on the EASA website at *https://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. This material may be found in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–1009.

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

Issued on November 12, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–25635 Filed 11–22–21; 11:15 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0382; Project Identifier MCAI–2021–00382–T; Amendment 39–21797; AD 2021–22–24]

RIN 2120–AA64

Airworthiness Directives; MHI RJ Aviation ULC (Type Certificate Previously Held by Bombardier, Inc.) Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain MHI RJ Aviation ULC Model CL–600–2C10 (Regional Jet Series 700, 701 & 702), CL–600–2C11 (Regional Jet Series 550), CL–600–2D15 (Regional Jet Series 705), CL–600–2D24 (Regional Jet Series 900), and CL–600–2E25 (Regional Jet Series 1000) airplanes. This AD was prompted by a determination that new or more restrictive airworthiness limitations for structural inspections and safe life components are necessary. This AD requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective December 29, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of December 29, 2021.

ADDRESSES: For service information identified in this final rule, contact MHI RJ Aviation ULC, 12655 Henri-Fabre Blvd., Mirabel, Québec J7N 1E1 Canada; Widebody Customer Response Center North America toll-free telephone +1–844–272–2720 or direct-dial telephone +1–514–855–8500; fax +1–514–855–8501; email *thd.crj@mhirj.com;* internet *https://mhirj.com*. You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0382.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0382; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Antariksh Shetty, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued TCCA AD CF–2020–53, dated December 7, 2020 (TCCA AD CF–2020–53) (also referred to after this as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for certain MHI RJ Aviation ULC Model CL–600–2C10 (Regional Jet Series 700, 701 & 702), CL–600–2C11 (Regional Jet Series 550), CL–600–2D15 (Regional Jet Series 705), CL–600–2D24 (Regional Jet Series 900), and CL–600–2E25 (Regional Jet Series 1000) airplanes. You may examine the MCAI

in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0382.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain MHI RJ Aviation ULC Model CL–600–2C10 (Regional Jet Series 700, 701 & 702), CL–600–2C11 (Regional Jet Series 550), CL–600–2D15 (Regional Jet Series 705), CL–600–2D24 (Regional Jet Series 900), and CL–600–2E25 (Regional Jet Series 1000) airplanes. The NPRM published in the **Federal Register** on May 27, 2021 (86 FR 28501). The NPRM was prompted by a determination that new airworthiness limitations for structural inspections and safe life components are necessary. The NPRM proposed to require revising the existing maintenance or inspection program, as applicable, to incorporate new airworthiness limitations. The FAA is issuing this AD to address reduced structural integrity and reduced controllability of the airplane. See the MCAI for additional background information.

Comments

The FAA gave the public the opportunity to participate in developing this final rule. The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Withdraw the NPRM

Air Wisconsin Airlines (Air Wisconsin) requested that the FAA withdraw the NPRM. Air Wisconsin stated that the FAA should require the normal approval routing for revisions to the maintenance requirements manual (MRM) and review the tasks for genuine safety of flights concerns. Air Wisconsin opined that MHI RJ Aviation was trying to force FAA approval of any revision to their maintenance review board (MRB), which then intrudes on an operator's ability to reasonably manage their approved maintenance program. Air Wisconsin concluded that, if successful, the FAA will not need to be asked again to review any revision to any of the documents MHI RJ Aviation wants to push through but will only go to Transport Canada to issue an AD.

The FAA disagrees with the request to withdraw the NPRM. The FAA approved the MRM at Revision 23 and Revision 24 via the Implementation Procedures for Airworthiness (IPA) agreement in place between the U.S. and Canada. The IPA agreement can be found on FAA's website if Air Wisconsin would like to review it further.

In addition, this AD is necessary to address the identified unsafe condition. The FAA issues ADs to require actions to address unsafe conditions that are not otherwise being addressed (or are not addressed adequately) by normal maintenance procedures. The FAA may address such unsafe conditions by requiring revisions to existing maintenance or inspection programs, as applicable, as a condition under which airplanes may continue to be operated. Since the specific revision of the airworthiness limitations issued at the time an airplane is produced must be followed for that airplane, as specified in 14 CFR 21.31(c). Later revisions of the airworthiness limitation document are not required to be incorporated into the maintenance or inspection program for that airplane unless an AD mandates those revisions. Therefore, the FAA has determined that it is necessary to issue this final rule.

Request To Clarify ''New'' Airworthiness Limitations

Air Wisconsin stated that paragraph (e) of the proposed AD specifies that these are ''new'' airworthiness limitations for structural inspections and safe life components; however many, if not all of these already exist in the FAA-approved MRM at Revision 21. Air Wisconsin also noted that paragraph (f) of the proposed AD states to comply with this AD ''within the compliance times specified, unless already done'' and noted that not all the tasks in MRM Revision 23 are newly introduced.

The FAA agrees to clarify that for any tasks already in an operator's maintenance or inspection program, there is no action required by this AD as the operator has already incorporated those tasks into its maintenance or inspection program. Only new or more restrictive airworthiness limitations must be incorporated. The FAA has revised the Summary, Related Service Information under 1 CFR part 51, and paragraph (e) of this AD to better describe the airworthiness limitations as ''new or more restrictive'' airworthiness limitations.

Request To Clarify How ''Unapproved'' Actions Could Already Be Done

Air Wisconsin asked how ''unapproved'' actions could already be done. Air Wisconsin stated ''Revision 23 or 24 [of the MRM] have not been FAA approved'' and are referred to in the service information specified in paragraph (g)(1) of the proposed AD. Air Wisconsin also stated that paragraph (g)(2) of the proposed AD refers to service information that requires the incorporation of ''FAA unapproved version of the MRM revision 23 or subsequent'' and said it seems as though this is a flagrant usurpation to force FAA approval of a document previously rejected by the FAA.

The FAA notes that both MRM Revision 23 and 24 are FAA approved via the IPA agreement in place with TCCA. In addition, the FAA has confirmed that the MRM at Revision 23 and 24 were never rejected by the FAA. The FAA approval process is not affected by this AD.

The background of the NPRM refers to the MCAI that provides more clarity that there may be some tasks revised, added, or deleted. As the Revision 23 and 24 of the MRM are published and FAA approved, prior to mandating the MRM as identified in this AD, operators might have already complied with the actions in the documents. Therefore, operators could have already complied with the actions prior to the effective date of this AD.

For clarity, the FAA is mandating the tasks specified in the MRM at Revision 23 at least at this time. However, as noted in the service information, operators may incorporate the specified items in revision 23 or subsequent revisions of the MRM. Operators cannot incorporate specified items in any revision before revision 23.

Request To Clarify if Alternative Methods of Compliance (AMOCs) Are Needed for Operators With an Approved Reliability Program

Air Wisconsin requested that the FAA clarify if AMOCs are needed for operators that have an approved reliability program. Air Wisconsin stated that paragraph (h) of the proposed AD states that ''after the existing maintenance or inspection program has been revised as required by paragraph (g), no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions and intervals are approved as an AMOC.''

The FAA acknowledges the commenter's request and has revised paragraph (h) of this AD for clarification. An AMOC is not needed when operators incorporate a subsequent revision of the MRM completely. The FAA has revised paragraph (h) of this AD to remove the reference to the AMOC paragraph to state ''After the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) or intervals may be used unless they are approved as specified in the provisions of paragraphs 2.B.(2)(a) and 2.B.(3)(a) of the Accomplishment Instructions of

MHI RJ Service Bulletin 670BA–05–001, dated August 27, 2020.''

Request To Clarify if AMOCs Are Needed for Changes in the Intervals

Air Wisconsin requested that the FAA clarify if AMOCs are needed for changes in the intervals that occur in subsequent revisions. Air Wisconsin noted that intervals may be different due to when they were incorporated. Air Wisconsin asked, if MHI RJ Aviation changes the intervals in subsequent revisions, would MHI RJ Aviation be required to request a global AMOC to accommodate the subsequent interval change.

The FAA notes that operators are not required to incorporate later revisions of the MRM unless the FAA mandates those revisions in a new AD. However, for operators that do incorporate any later revisions of the MRM after Revision 23, an AMOC is not required. The FAA further notes that whichever subsequent revision an operator incorporates, it must do so completely. An AMOC is only needed if an operator wants to incorporate a different interval than the interval specified in the MRM that the operator has incorporated for compliance with this AD.

Request To Clarify Compliance With the Tasks

Air Wisconsin requested that FAA clarify how the FAA, or anyone else, would determine if an operator is in compliance with the tasks. Air Wisconsin stated the MHI RJ Service Bulletin 670BA–05–001, dated August 27, 2020, does not specify intervals for the tasks. Further, Air Wisconsin requested that the FAA explain how operators would show compliance with the proposed AD in five years.

The FAA notes that as required by paragraph (g)(1) of this AD everything within paragraph 2.B.(2)(a) of the Accomplishment Instructions of MHI RJ Service Bulletin 670BA–05–001, dated August 27, 2020, must be followed completely. Specifically that paragraph states ''Make sure that your approved maintenance program includes all the applicable items listed in the revision 23 or subsequent of the MRM (Manual CSP B–53) Part 2 Airworthiness Limitation Items (ALIs), Section 2 Structural Inspections and obey the instructions . . . .'' The MRM contains the intervals (repeat cut-in and repeat compliance times as well as the threshold), in addition to the other category items specified in the service bulletin. The FAA notes that requiring restrictive airworthiness limitation tasks must be mandated through an AD in order to ensure U.S. operators comply with the task restrictions and timeframe. This AD requires incorporation of these tasks and compliance with these tasks is required by 14 CFR 91.403(c).

Conclusion

The FAA reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this final rule with the changes described previously and minor editorial changes. The FAA has determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for addressing the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

The FAA also determined that these changes will not increase the economic burden on any operator or increase the scope of this final rule.

Related Service Information Under 1 CFR Part 51

MHI RJ Aviation ULC has issued MHI RJ Service Bulletin 670BA–05–001, dated August 27, 2020. This service information describes new or more restrictive airworthiness limitations for structural inspections and safe life components.

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

Costs of Compliance

The FAA estimates that this AD affects 554 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2021–22–24 MHI RJ Aviation ULC (Type Certificate Previously Held by Bombardier, Inc.): Amendment 39–21797; Docket No. FAA–2021–0382; Project Identifier MCAI–2021–00382–T.

(a) Effective Date

This airworthiness directive (AD) is effective December 29, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to MHI RJ Aviation ULC airplanes identified in paragraphs (c)(1) through (3) of this AD, certificated in any category.

(1) Model CL–600–2C10 (Regional Jet Series 700, 701 & 702) and CL–600–2C11 (Regional Jet Series 550) airplanes, serial numbers 10002 and subsequent.

(2) Model CL–600–2D15 (Regional Jet Series 705) and CL–600–2D24 (Regional Jet Series 900) airplanes, serial numbers 15001 and subsequent.

(3) Model CL–600–2E25 (Regional Jet Series 1000) airplanes, serial numbers 19001 and subsequent.

(d) Subject

Air Transport Association (ATA) of America Code 05, Periodic Inspections.

(e) Unsafe Condition

This AD was prompted by a determination that new or more restrictive airworthiness limitations for structural inspections and safe life components are necessary. The FAA is issuing this AD to address reduced structural integrity and reduced controllability of the airplane.

(f) Compliance

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

(g) Maintenance or Inspection Program Revision

Within 180 days after the effective date of this AD, revise the existing maintenance or inspection program, as applicable, to incorporate the airworthiness limitations for structural inspections and safe life components specified in paragraphs (g)(1) and (2) of this AD.

(1) The task number, model effectivity, threshold, repeat cut-in, repeat, and task type for the Section 2 structural inspections specified in paragraph 2.B.(2)(a) of the Accomplishment Instructions of MHI RJ Service Bulletin 670BA–05–001, dated August 27, 2020.

(2) The task number, part number, model effectivity, and discard time for the Section 3 safe life components specified in paragraph 2.B.(3)(a) of the Accomplishment Instructions of MHI RJ Service Bulletin 670BA–05–001, dated August 27, 2020.

(h) No Alternative Actions and Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) or intervals may be used unless they are approved as specified in the provisions of paragraphs 2.B.(2)(a) and 2.B.(3)(a) of the Accomplishment Instructions of MHI RJ Service Bulletin 670BA–05–001, dated August 27, 2020.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. 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, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or MHI RJ Aviation ULC's TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) TCCA AD CF–2020–53, dated December 7, 2020, for related information. This MCAI may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0382.

(2) For more information about this AD, contact Antariksh Shetty, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531; email *9-avs-nyaco-cos@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) MHI RJ Service Bulletin 670BA–05–001, dated August 27, 2020.

(ii) Reserved.

(3) For service information identified in this AD, contact MHI RJ Aviation ULC, 12655 Henri-Fabre Blvd., Mirabel, Québec J7N 1E1 Canada; Widebody Customer Response Center North America toll-free telephone +1–844–272–2720 or direct-dial telephone +1–514–855–8500; fax +1–514–855–8501; email *thd.crj@mhirj.com;* internet *https://mhirj.com.*

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

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

Issued on October 22, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–25535 Filed 11–23–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0201; Project Identifier MCAI–2020–01346–T; Amendment 39–21790; AD 2021–22–17]

RIN 2120–AA64

Airworthiness Directives; Airbus Canada Limited Partnership (Type Certificate Previously Held by C Series Aircraft Limited Partnership (CSALP); Bombardier, Inc.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus Canada Limited Partnership Model BD–500–1A10 and BD–500–1A11 airplanes. This AD was prompted by a report of cracking in certain components on left and right sides of the aft wing-to-body fairing (WTBF) structure near the tie-rod attachment at a certain fuselage station; this cracking likely resulted from excessive tie-rod preload. This AD requires inspecting the aft WTBF structure for any cracking or damage, adjusting the load on the two tie-rods at a certain fuselage station, and repair if necessary, as specified in two Transport Canada Civil Aviation (TCCA) ADs, which are incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective December 29, 2021.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of December 29, 2021.

ADDRESSES: For TCCA material incorporated by reference (IBR) in this AD, contact the TCCA, Transport Canada National Aircraft Certification, 159 Cleopatra Drive, Nepean, Ontario K1A 0N5, Canada; telephone 888–663–3639; email *AD-CN@tc.gc.ca;* internet *https://tc.canada.ca/en/aviation.* 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. It is also available in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0201.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0201; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the two TCCA ADs, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT:

Antariksh Shetty, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The TCCA, which is the aviation authority for Canada, has issued TCCA AD CF–2020–32, dated September 25, 2020 (TCCA AD CF–2020–32), to correct an unsafe condition for all Airbus Canada Limited Partnership Model BD–500–1A10 and BD–500–1A11 airplanes.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus Canada Limited Partnership Model BD–500–1A10 and BD–500–1A11 airplanes. The NPRM published in the **Federal Register** on April 1, 2021 (86 FR 17087). The NPRM was prompted by a report of cracking in certain components on left and right sides of the aft WTBF structure near the tie-rod attachment at a certain fuselage station; this cracking likely resulted from excessive tie-rod preload. The NPRM proposed to require inspecting the aft WTBF structure for any cracking or damage, adjusting the load on the two tie-rods at a certain fuselage station, and repair if necessary, as specified in TCCA AD CF–2020–32.

Since the NPRM was issued, the TCCA has issued TCCA AD CF–2020–32R1, dated April 23, 2021 (TCCA AD CF–2020–32R1), which provides extended compliance times for airplanes on which a certain WTBF reinforcement modification has been accomplished. The applicability of TCCA AD CF–2020–32R1 is the same as in TCCA AD CF–2020–32; therefore, there is no change to the applicability of this AD. In addition, TCCA AD CF–2020–32R1 does not add any new requirements; the change to the compliance time is relieving. Operators can address the unsafe condition identified in this AD by accomplishing the actions specified in either TCCA AD CF–2020–32 or TCCA AD CF–2020–32R1.

The FAA is issuing this AD to address such cracking, which could lead to loss of aft WTBF integrity and result in damage due to parts departing the airplane, loss of the radio altimeter, and effects on airplane stability and performance. See TCCA ADs CF–2020–32 and CF–2020–32R1 for additional background information.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from two commenters, including Airbus Canada Limited Partnership (Airbus Canada) and Delta Air Lines (DAL). Additionally, on July 20, 2021, the FAA, Airbus Canada, and DAL had a meeting to clarify some of DAL's comments. A record of that meeting can be found in the docket for this final rule. The following presents the comments received on the NPRM and the FAA's response to each comment.

Request for Clarification of ''approved'' as Used in ''later-approved revision''

Airbus Canada requested clarification on the use of ''approved'' in ''later-approved revision'' stated in paragraph (h)(5) of the proposed AD. Airbus Canada pointed out that the referenced document is not an approved document and is not listed on the TCCA or FAA type certificate data sheet as an approved publication. Airbus Canada stated that it found that the phrase seemed to imply authority involvement in approving that document, but TCCA's involvement, per Canadian regulations, is to find whether implementation of that document is appropriate and sufficient to rectify an unsafe condition.

DAL stated that including ''approved'' in the phrase ''or later approved revisions'' changes the definition of ''applicable [aircraft maintenance publication] AMP [data module] DM'' as provided in the TCCA AD CF–2020–32. DAL stated that the aircraft maintenance publication is an FAA-accepted document, not an FAA-approved document. DAL requested that if the FAA retains ''or later approved revision,'' that the FAA then provide its approval of Issue 006 of the document in the final rue. DAL also stated that if Airbus Canada revises the document, operators are not generally aware of corresponding changes to data modules, and operators would not be able to use the later revision without FAA approval and would not be able to do the inspection.

The FAA agrees to clarify. The FAA does not have jurisdiction over TCCA regulatory requirements. However, U.S. operators must follow FAA requirements and regulations for compliance with FAA ADs. For the purposes of this AD, Airbus Canada Limited Partnership AMP DM BD500–A–J53–82–55–04AAA–720A–A (Aft fairing strut, Wing To Body Fairing (WTBF)—Install procedure) Issue 006, dated June 26, 2020, is the approved version specified in TCCA AD CF–2020–32 and TCCA AD CF–2020–32R1. Operators must have approval to use later revisions of referenced documents. If the phrase ''or later revision'' is not modified, operators could comply with a document containing changes that have not been reviewed and approved by TCCA, the FAA, or the design approval organization (DAO) for Airbus Canada to mitigate the unsafe condition. The FAA has revised paragraph (h)(6) of this AD to specify that later revisions must be approved by the Manager, New York ACO Branch, FAA; or TCCA; or Airbus Canada's TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

Request To Incorporate Revised TCCA AD Into Final Rule

DAL stated that TCCA has released a Revision 01 to the TCCA AD CF–2020–32, which specifies revised compliance times and references revised service information that contains information for airplanes delivered with a new configuration. DAL requested that the proposed AD be revised to incorporate the later revision instead of the original TCCA AD CF–2020–32.

The FAA agrees to reference the later revision as an optional method of compliance. TCCA has issued TCCA AD CF–2020–32R1, which extends the repetitive inspection intervals for airplanes on which the modification to strengthen the support structure of the aft WTBF has been accomplished. The FAA has revised paragraphs (g), and (h)(1) through (7) of this AD to reference TCCA AD CF–2020–32R1 and has

added and re-designated lower level paragraphs in paragraph (h) of this AD.

Request To Revise Cost Estimate

DAL requested that the FAA revise the cost estimate to increase the number of airplanes estimated to be affected by the AD requirements. DAL pointed out that the applicability statement in paragraph (c) of the proposed AD identified all Model BD–500–1A10 and BD–500–1A11 airplanes as being affected by the proposed requirements. DAL stated that it has 48 of these airplanes and is aware of another operator taking delivery of these airplanes, which is more than the 11 airplanes estimated in the Cost of Compliance section of the NPRM.

The FAA agrees to revise the Cost of Compliance section to increase the number of airplanes estimated to be affected by the requirements of this AD. As of September 15, 2021, the database that was used to provide the estimate for the NPRM shows 54 U.S.-registered airplanes that could be affected by this AD, which supports DAL's request. The FAA has revised the cost estimate accordingly.

Request To Revise AD To Accommodate Operator Produced Part With Improved Design

DAL requested an exception be added to paragraph (h) of the AD to allow DAL to use Airbus Canada service information for inspection instructions. DAL stated that, given that many of their airplanes have had longeron repairs or replacements after delivery with components designed and made under an owner-operator produced parts (OOPP) process, it would not be able to comply with the inspections due to a statement in the service information that excludes use of the service information on airplanes that do not have systems and parts that were installed at delivery or as changed by a service bulletin. DAL stated that until Airbus Canada develops a WTBF configuration that does not crack, it concurs with the inspection requirement and wants to be able to use the inspection instructions to comply with the proposed AD.

The FAA disagrees. If an operator or owner is unable to comply with requirements due to an airplane configuration that does not conform to the configurations addressed by service information, operators or owners must request an alternative method of compliance (AMOC) as specified in paragraph (i)(1) of this AD. AMOC requests should include sufficient data to show that the proposed alternate solution is complete and addresses the unsafe condition. The FAA also does not consider it appropriate to include various provisions or exceptions in an AD applicable only to a single operator's unique circumstances. The FAA has not changed this AD in this regard.

Request To Provide Alternative Repair Instructions for Non-Standard Configurations

DAL stated that it has installed longerons that it designed and manufactured under its OOPP program, and is concerned about not being able to acquire repair instructions as instructed in the event that those certain longerons are found to be cracked. DAL has stated that Airbus Canada would not be able to provide support for OOPP. DAL pointed out that paragraph (i)(2) of the proposed AD states that for any requirement to obtain instructions from a manufacturer, that it should use a method approved by the Manager, New York ACO Branch, FAA; or TCCA; or Airbus Canada's TCCA Design Approval Organization (DAO). DAL proposed that the proposed AD be revised to add an exception that states that replacement of damaged structural elements would be acceptable in lieu of a repair.

The FAA disagrees with the request. Paragraph (i)(2) provides for receiving instructions from the Manager, New York ACO Branch, FAA, or TCCA in lieu of instructions from Airbus Canada's DAO if the DAO cannot provide repair instructions. Also, paragraph (i)(1) of this AD provides procedures to request an AMOC to the methods required to be used in this AD. AMOCs are issued after an AD has been issued and sufficient data has been provided to show that the proposed alternate solution is complete and addresses the unsafe condition. The FAA also does not consider it appropriate to include various provisions or exceptions in an AD applicable only to a single operator's unique circumstances. The FAA has not changed this AD in this regard.

Request To Revise Inspection Report Requirement

DAL noted that paragraph (h)(6) of the proposed AD specified reporting requirements. DAL perceived reporting requirements as a tool to be used mostly to support efforts to understand statistical probabilities of failure. DAL then considered that reporting findings in situations where the airplane configuration deviates from the configuration that the manufacturer is analyzing is possibly disruptive to prediction models, and suggested revising the AD to exempt operators from reporting in cases where the affected parts have been previously repaired or replaced, particularly if it is a non-conforming configuration.

The FAA does not agree to add an exemption for airplanes on which an affected part has been repaired or replaced, even if it is not in a configuration that conforms to a manufacturer's configuration. Reasons to have a reporting requirement can extend beyond statistical analysis for fatigue or aging of a part, and information from non-conforming configurations can be beneficial in determining a corrective action. The FAA has not changed this AD regarding this issue.

DAL also requested that the compliance time for reporting inspection results be extended from 30 days to 180 days after the inspection. DAL considered the 30 days to be too onerous considering how long heavy maintenance visits take and that an inspection could be conducted at the start of the visit, but the paper records might not be received until 60 days after the inspection. DAL noted that an extended time window will allow findings to be batched together for a group report and preclude undue compliance issues related to late reporting.

The FAA disagrees with the request. TCCA specified 30 days and that aligns with the FAA's standardized compliance time for inspection reports. The FAA and Airbus Canada concur with TCCA's decision. The manufacturer uses the reports to analyze the findings and to develop new service information that incorporates those findings. However, once this AD is published, any person may request approval of an AMOC under the provisions of paragraph (i)(1) of this AD. The FAA has not changed this AD regarding this issue.

Request To Remove Exception for No Flights With Cracking

DAL requested that the proposed exception in paragraph (h)(2) of the proposed AD be removed. DAL explained that both TCCA ADs CF–2020–32 and CF–2020–32R1 state to repair cracks or damage by using certain service information, and that the steps state that the damage is to be reported to and dispositioned by Airbus Canada, but no mention of any fly-on allowance for documented crack or damage findings.

The FAA disagrees with the request. In both TCCA ADs CF–2020–32 and CF–2020–32R1, there is no phrase that specifically states that the repair is to be done before further flight. Therefore, operators might inadvertently determine that the compliance times specified in

both TCCA ADs CF–2020–32 and CF–2020–32R1 are for both accomplishing the inspections and repairs. The FAA found it necessary to clarify that it does not intend to allow flight with known cracking. The FAA has not changed this AD regarding this issue.

Request To Revise Description of Root Cause

DAL requested that the Discussion section of the NPRM be updated to reflect new information on the number of aft WTBF configurations. DAL pointed out that the Discussion section stated that ''the cracking reportedly begins earlier on airplanes with the latest of the two aft WTBF configurations.'' DAL acknowledged that the statement may have been true at the time of drafting, but added that the FAA should be informed that there is a third WTBF configuration which includes additional structure.

The FAA concurs with the request, however the content of the Discussion section of the NPRM is not repeated in this AD.

Conclusion

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

Related Service Information Under 1 CFR Part 51

TCCA ADs CF–2020–32 and CF–2020–32R1 specify procedures for doing repetitive detailed visual inspections of the aft WTBF structure for any cracking or damage (including, but not limited to, cracking), adjusting the load on the two tie-rods at fuselage station (FS) 973, reporting inspection results, and repairing any cracked or damaged WTBF structure. These documents are unique because TCCA AD CF–2020–32R1 includes revised compliance times for certain airplanes. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Interim Action

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

Costs of Compliance

The FAA estimates that this AD affects 54 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS *

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
9 work-hours × $85 per hour = $765	$0	$765	$41,310

* Table does not include estimated costs for reporting.

The FAA estimates that it would take about 1 work-hour per product to comply with the reporting requirement in this AD. The average labor rate is $85 per hour. Based on these figures, the FAA estimates the cost of reporting on U.S. operators to be $4,590, or $85 per product.

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

Paperwork Reduction Act

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

Accordingly, under the authority delegated to me by the Administrator,

the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2021–22–17 Airbus Canada Limited Partnership (Type Certificate Previously Held by C Series Aircraft Limited Partnership (CSALP); Bombardier, Inc.): Amendment 39–21790; Docket No. FAA–2021–0201; Project Identifier MCAI–2020–01346–T.

(a) Effective Date

This airworthiness directive (AD) is effective December 29, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus Canada Limited Partnership (type certificate previously held by C Series Aircraft Limited Partnership (CSALP); Bombardier, Inc.) Model BD–500–1A10 and BD–500–1A11 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Reason

This AD was prompted by a report of cracking in the longeron, frame, and tie-rod on left and right sides of the aft wing-to-body fairing (WTBF) structure near the tie-rod attachment at fuselage station (FS) 973; this cracking likely resulted from excessive tie-rod preload. The FAA is issuing this AD to address such cracking, which could lead to loss of aft WTBF integrity and result in damage due to parts departing the airplane, loss of the radio altimeter, and effects on airplane stability and performance.

(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, Transport Canada Civil Aviation (TCCA) AD CF–2020–32, dated September 25, 2020 (TCCA AD CF–2020–32); or TCCA AD CF–2020–32R1, dated April 23, 2021 (TCCA AD CF–2020–32R1).

(h) Exceptions to TCCA AD CF–2020–32 and TCCA AD CF–2020–32R1

(1) Where TCCA AD CF–2020–32 and TCCA AD CF–2020–32R1 refer to its effective date, this AD requires using the effective date of this AD.

(2) Where TCCA AD CF–2020–32R1 refers to the effective date of TCCA AD CF–2020–32 (October 9, 2020), this AD requires using the effective date of this AD.

(3) Where paragraphs B. and E. of TCCA AD CF–2020–32 and Part II and V of TCCA AD CF–2020–32R1 specify to repair ''any cracks or damage'' at certain compliance times or intervals, this AD requires repairing any cracks or damage before further flight.

(4) Where TCCA AD CF–2020–32 and TCCA AD CF–2020–32R1 refer to hours air time, this AD requires using flight hours.

(5) Where table 1 of TCCA AD CF–2020–32 specifies a compliance time ''for new aeroplanes with an aeroplane date of manufacture, as identified on the identification plate of the aeroplane, dated on or after the effective date of this AD'' and table 1 of TCCA AD CF–2020–32R1 specifies a compliance time ''for new aeroplanes with an aeroplane date of manufacture, as identified on the identification plate of the aeroplane, dated on or after the effective date of AD CF–2020–32 (9 October 2020),'' for this AD use ''for airplanes with a date of manufacture, as identified on the identification plate of the airplane, dated on or after the effective date of this AD.''

(6) Where TCCA AD CF–2020–32 and TCCA AD CF–2020–32R1 define the ''applicable [aircraft maintenance publication] AMP [data module] DM,'' replace the text ''Airbus Canada Limited Partnership AMP DM BD500–A–J53–82–55–04AAA–720A–A (Aft fairing strut, Wing To Body Fairing (WTBF)—Install procedure) Issue 006, dated 26 June 2020, or later revisions,'' with the ''Airbus Canada Limited Partnership AMP DM BD500–A–J53–82–55–04AAA–720A–A (Aft fairing strut, Wing To Body Fairing (WTBF)—Install procedure) Issue 006, dated 26 June 2020; or later revisions approved by the Manager, New York ACO Branch, FAA, or TCCA, or Airbus Canada's TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.''

(7) Paragraph D. of TCCA AD CF–2020–32 and Part IV of TCCA AD CF–2020–32R1 specify to report inspection results to Airbus Canada Limited Partnership within a certain compliance time. For this AD, report inspection results at the applicable time specified in paragraph (h)(7)(i) or (ii) of this AD.

(i) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(ii) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

(i) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; tax 516–794–5531. 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, New York ACO Branch, FAA; or TCCA; or Airbus Canada's TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(3) *Paperwork Reduction Act Burden Statement:* A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. All responses to this collection of information are mandatory as required by this AD. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

(j) Related Information

For more information about this AD, contact Antariksh Shetty, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) Transport Canada Civil Aviation (TCCA) AD CF–2020–32, dated September 25, 2020 (TCCA AD CF–2020–32).

(ii) Transport Canada Civil Aviation (TCCA) AD CF–2020–32R1, dated April 23, 2021 (TCCA AD CF–2020–32R1).

(3) For TCCA AD CF–2020–32 and TCCA AD CF–2020–32R1, contact Transport Canada National Aircraft Certification, 159 Cleopatra Drive, Nepean, Ontario K1A 0N5,

Canada; telephone 888–663–3639; email *AD-CN@tc.gc.ca;* internet *https://tc.canada.ca/en/aviation.*

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

Issued on October 19, 2021.

Ross Landes,

Deputy Director for Regulatory Operations, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–25532 Filed 11–23–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0545; Project Identifier MCAI–2021–00071–T; Amendment 39–21791; AD 2021–22–18]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus SAS Model A350–941 and –1041 airplanes. This AD was prompted by a report of a broken forward guide arm found during a passenger door emergency opening test. Investigation results indicated that the opening speed of the door was higher than expected, likely caused by a reduced damping due to oil leakage of the passenger door damper emergency opening actuator (DEOA). This AD requires repetitively replacing certain forward and aft guide arms on the passenger door, inspecting the forward and aft guide arm support brackets for damage, modifying certain DEOAs, and repairing damage if necessary, and also provides an optional terminating action for the repetitive replacements, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective December 29, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of December 29, 2021.

ADDRESSES: For material incorporated by reference (IBR) in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR 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. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0545.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0545; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3225; email *dan.rodina@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021–0085, dated March 19, 2021 (EASA AD 2021–0085) (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for all Airbus SAS Model A350–941 and –1041 airplanes. EASA AD 2021–0085 superseded EASA AD 2021–0018, dated January 15, 2021.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus SAS Model A350–941 and –1041 airplanes. The NPRM published in the **Federal Register** on July 6, 2021 (86 FR 35413). The NPRM was prompted by a report of a broken forward guide arm found during a passenger door emergency opening test. Investigation results indicated that the opening speed of the door was higher than expected, likely caused by a reduced damping due to oil leakage of the passenger door DEOA. The NPRM proposed to require repetitively replacing certain forward and aft guide arms on the passenger door, inspecting the forward and aft guide arm support brackets for damage, modifying certain DEOAs, and repairing damage if necessary, and also proposed to provide an optional terminating action for the repetitive replacements, as specified in EASA AD 2021–0085.

The FAA is issuing this AD to address failure of a passenger door to perform its intended function during an emergency opening, which could result in reduced evacuation capacity from the airplane and injury to occupants. See the MCAI for additional background information.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from one commenter. The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Add Exceptions to MCAI Specifications

Delta Air Lines Inc. (DAL) asked that the FAA add a new exception paragraph to the proposed AD to allow the replacement of DEOA part number (P/N) FE396001001 with DEOA P/N FE396001004, FE396001005, or FE396001006 (or later model), in addition to DEOA P/N FE396001003 currently included in the instructions. DAL stated that the RC (required for compliance) instructions appear to limit operators to install only P/N FE396001003. DAL sent in a request for clarification from Airbus in which Airbus clarified that DEOA P/N FE396001001 can be replaced with DEOA P/N FE396001003, FE396001004, FE396001005, or FE396001006, since P/Ns FE396001003, FE396001004, FE396001005, and FE396001006 are interchangeable.

The FAA agrees with the commenter's request, for the reasons provided. The FAA has added the exception in paragraph (h)(6) of this AD.

DAL also asked that the FAA add another new exception paragraph to the proposed AD, as follows: ''For this AD,

DEOAs which are not 'new' may be used when completing the instructions in Airbus Service Bulletin A350–52–P049, Rev 00, Option 2, as long as they fit the definition of a 'serviceable part' per EASA AD 2021–0085, and do not have part number [P/N] FE396001001 (*i.e.,* P/N FE396001003, FE396001004, FE396001005, FE396001006 or later).'' DAL stated that, the DEOA replacement in Option 2 of Airbus Service Bulletin A350–52–P049, dated January 15, 2021, provides instructions to install a ''new'' DEOA. However, DAL believes that the word ''serviceable'' should be used rather than ''new'' in the instructions. DAL noted that Airbus may have inadvertently limited operators to only ''new'' actuators when otherwise ''used'' serviceable DEOAs would be acceptable per the definitions of ''serviceable part'' in the referenced service information. DAL added that it understands that the supply of these DEOAs is low worldwide, and serviceable parts, as defined by EASA AD 2021–0085, may not necessarily be ''new.'' They may be overhauled, repaired, upgraded, modified, etc. DAL stated that such a DEOA will still be compliant with EASA AD 2021–0085, as long as the DEOA is in the ''serviceable'' configuration and does not have P/N FE396001001 (*i.e.,* has P/N FE396001003, FE396001004, FE396001005, FE396001006, or later). Because DAL is planning to ship affected (discrepant) P/N FE396001001 DEOAs back to the original equipment manufacturer (OEM) for modification, and P/N FE396001001 may be modified to become a ''serviceable part,'' the possibility exists that DAL could receive serviceable parts (DEOAs other than P/N FE396001001) that may not necessarily be ''new'' according to the associated delivery documents.

The FAA agrees with the commenter's request, for the reasons provided. DEOAs that are ''serviceable'' may be used during accomplishment of the instructions in Airbus Service Bulletin A350–52–P049, Option 2, provided the part fits the definition of a ''serviceable part'' per EASA AD 2021–0085. The FAA has added the exception in paragraph (h)(7) of this AD.

DAL asked that paragraph (h) be revised to add an exception to Airbus Service Bulletin A350–52–P049, which states to use CML 04SBA3 varnish polyurethane to protect the identification plate during modification or replacement of the door actuator. DAL stated that the proposed AD should allow the use of CA8800/B900 in lieu of CML 04SBA3.

The FAA agrees with the commenter's request. Airbus has granted DAL permission to use the material CA8800/B900 in lieu of the CML 04SBA3 materials. The FAA has added this exception in paragraph (h)(10) of this AD.

Request To Clarify Compliance Time for Replacement

DAL asked that the compliance time in paragraph (2) of EASA AD 2021–0085 be clarified in the proposed AD as an exception. DAL stated that 15 days means 15 days ''in-service'' on an airplane. DAL stated that EASA AD 2021–0085 contains no provisions for used spare doors on which the 15-day guide arm replacement required by that paragraph may have already been exceeded. DAL noted that an operator could have a spare door (or acquire a spare door) that may have previously had an emergency opening with an affected DEOA, and may not have had the guide arms replaced within 15 days, and if the operator wishes to install the spare door, the replacement requirement cannot be complied with in 15 days, since 15 days may have already elapsed. DAL concluded that any installation of a spare door that has had an emergency opening with the affected actuator would require requesting an alternative method of compliance (AMOC) for the guide arm replacement time.

The FAA disagrees with the request. The grace period of 15 days is sufficient to accomplish the task and is unrelated to on-aircraft usage. For spare parts subject to this AD for which the grace period has elapsed, the AD actions would be required prior to reinstallation on an airplane. No change to the AD is made in this regard.

Request To Correct Cotter Pin Part Number

DAL asked that the proposed AD be revised to add an exception to correct the cotter pin part number identified as P/N MS24665–155 in Airbus Service Bulletin A350–52–P050, dated December 15, 2020, which is referenced in the EASA AD. DAL stated that the proposed AD should allow the use of cotter pins having the correct P/N MS24665–300.

The FAA agrees with the commenter's request. Airbus issued Operators Information Transmission (OIT)—SBIT 21–0014, dated July 8, 2021, to inform operators that P/N MS24665–155 is an incorrect part number for a cotter pin. Therefore, the FAA has added an exception in paragraph (h)(8) of this AD, which requires the use of cotter pins having P/N MS24665–300 instead of cotter pin P/N MS24665–155.

Request To Relocate Configured Spare Component (CSC) Number Marking

DAL asked that the proposed AD include an exception to correct the location to mark the CSC number. DAL stated that Airbus Service Bulletin A350–52–P049, dated January 15, 2021, specifies instructions to mark the new CSC number on the door label. DAL noted that an exception should require the new CSC number to be marked on the identification plate instead. DAL stated that the terms ''door label'' and ''identification plate'' appear to be used interchangeably in the referenced service information. DAL noted that as written, the instructions specified in Airbus Service Bulletin A350–52–P049 are confusing because there is both an identification plate and a door label on the door in the referenced figures; therefore, the instructions incorrectly state to mark the new CSC number on the door label instead of the identification plate. DAL requested confirmation from Airbus that the instructions were incorrect and was informed that the intent of the referenced service information is to mark the new CSC number on the identification plate and not the door label. Airbus issued Repair Design Approval Form (RDAF) 80876584/008/2021#A, dated February 8, 2021, to provide DOA confirmation of the incorrect instructions. The RDAF confirmed that the door label is not to be altered, and the re-identification is to be done to the identification plate only.

The FAA agrees with the commenter's request, for the reasons provided. The instructions specified in Airbus Service Bulletin A350–52–P049 incorrectly specify marking the new CSC number on the door label. Therefore, the FAA has added an exception in paragraph (h)(8) of this AD, which requires the new CSC number to be marked on the identification plate.

Request for Clarification of Terminology

DAL asked for clarification of the terminology used since the terms ''rod'' and ''guide arms'' are used interchangeably in Airbus Service Bulletin A350–52–P050, dated December 15, 2020, but not in the proposed AD. DAL stated that in order to reduce potential confusion as to which part is to be replaced, the proposed AD should include a statement that clearly defines that the terms ''rod'' and ''guide arms'' are used interchangeably.

The FAA agrees that ''guide arms'' and ''rods'' mean the same thing. The term ''guide arms'' is used in the

preamble of this AD; however, those terms are not specifically cited in the regulatory text. Therefore, the FAA has not changed this AD in this regard.

Request To Allow Parts Return

DAL asked that the proposed AD include an exception to allow the return of affected actuators to the OEM after accomplishing the instructions in Airbus Service Bulletin A350–52–P049, dated January 15, 2021. DAL stated that Option 2 of Airbus Service Bulletin A350–52–P049 provides instructions to replace the affected part (DEOA P/N FE396001001) and discard the DEOA with P/N FE396001001 upon replacement. However, DAL stated it intends to ship the removed DEOA back to the OEM for upgrade per its retrofit agreement instructions, rather than discarding the DEOA. DAL requested that the final rule state that return of affected actuators to the OEM is acceptable when accomplishing the instructions in Airbus Service Bulletin A350–52–P049.

The FAA acknowledges the commenter's request; however, this AD does not include a requirement that affected parts must be returned to the OEM. Returning affected parts is at the operator's discretion. However, the FAA has added an exception in paragraph (h)(11) of this AD to provide clarification that returning affected parts is not required by this AD.

Conclusion

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

Related Service Information Under 1 CFR Part 51

EASA AD 2021–0085 describes procedures for repetitively replacing the forward and aft guide arms following any passenger door emergency opening, modifying the airplane so that there is a maximum of one affected DEOA per door pair (left- and right-hand sides), inspecting the forward and aft guide arm support brackets for damage, and repair. EASA AD 2021–0085 also describes procedures for the optional replacement of each affected DEOA having P/N FE396001001, which is terminating action for the repetitive replacements. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2021–22–18 Airbus SAS: Amendment 39–21791; Docket No. FAA–2021–0545; Project Identifier MCAI–2021–00071–T.

(a) Effective Date

This airworthiness directive (AD) is effective December 29, 2021.

(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 52, Doors.

(e) Reason

This AD was prompted by a report of a broken forward guide arm found during a passenger door emergency opening test. Investigation results indicated that the opening speed of the door was higher than expected, likely caused by a reduced damping due to oil leakage of the passenger door damper emergency opening actuator (DEOA). The FAA is issuing this AD to address failure of a passenger door to perform its intended function during an emergency opening, which could result in reduced evacuation capacity from the airplane and injury to occupants.

(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) EASA AD 2021–0085, dated March 19, 2021 (EASA AD 2021–0085).

(h) Exceptions and Clarifications to EASA AD 2021–0085

(1) Where EASA AD 2021–0085 refers to January 29, 2021 (the effective date of EASA AD 2021–0018), this AD requires using the effective date of this AD.

(2) Where EASA AD 2021–0085 refers to its effective date, this AD requires using the effective date of this AD.

(3) This AD does not mandate compliance with the ''Remarks'' section of EASA AD 2021–0085.

(4) Where paragraphs (4) and (5) of EASA AD 2021–0085 refer to ''the limits as defined in the inspection SB [service bulletin],'' for this AD use ''the limits as defined in ASR [aircraft structural repair] A350–A–51–73–11–01ZZZ–667Z–A.''

(5) Where paragraphs (1) and (2) of EASA AD 2021–0085 specify to ''replace the forward and aft guide arms on that door in

accordance with the instructions of the inspection SB,'' this AD requires ''removing the forward and aft guide arms on that door, in accordance with the instructions of the inspection SB; doing a detailed inspection of the forward and aft guide arm support bracket on that door and all applicable corrective actions as specified in paragraphs (3) through (5) of EASA AD 2021–0085; and installing new forward and aft guide arms on that door, in accordance with the instructions of the inspection SB.''

(6) Where paragraph (6) of EASA AD 2021–0085 specifies to modify the airplane ''in accordance with the instructions of the modification SB,'' this AD allows the replacement of DEOA P/N FE396001001with DEOA P/N FE396001004, FE396001005, or FE396001006, in addition to DEOA P/N FE396001003.

(7) Where paragraph (6) of EASA AD 2021–0085 specifies to modify the airplane ''in accordance with the instructions of the modification SB'', this AD allows DEOAs that are ''serviceable'' to be used as replacement parts, provided the part fits the definition of a ''serviceable part'' as identified in EASA AD 2021–0085.

(8) Where paragraph (4) of EASA AD 2021–0085 specifies to accomplish the applicable corrective actions ''in accordance with the instructions of the inspection SB,'' this AD requires the use of cotter pins having P/N MS24665–300 instead of cotter pins having P/N MS24665–155.

(9) Where paragraphs (6) and (7) of EASA AD 2021–0085 specify to modify the airplane to ensure that there is a maximum of one affected part per door pair and that replacement of each affected part is terminating action, which involves the use of CML 04SBA3 varnish polyurethane to protect the identification plate, this AD also allows the use of CA8800/B900 varnish polyurethane in lieu of the CML 04SBA3 varnish polyurethane.

(11) Where the service information referenced in EASA AD 2021–0085 specifies discarding discrepant parts, this AD does not require that action.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2021–0085 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, 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 Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (k)(2) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, Large Aircraft Section, 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) Related Information

For more information about this AD, contact Dan Rodina, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3225; email *dan.rodina@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2021–0085, dated March 19, 2021.

(ii) [Reserved]

(3) For EASA AD 2021–0085, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://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 that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fr.inspection@nara.gov,* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on October 21, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–25534 Filed 11–23–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0648; Amendment No. 71–53]

RIN 2120–AA66

Airspace Designations; Incorporation by Reference Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, administrative correction.

SUMMARY: This action incorporates certain airspace designation amendments into FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, for incorporation by reference.

DATES: Effective date 0901 UTC November 24, 2021. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order JO 7400.11F, Airspace Designations and Reporting Points, and subsequent amendments can be viewed on line at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. FAA Order JO 7400.11F is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order JO 7400.11F at NARA, email: *fr.inspection@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: Sarah A. Combs, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code.

Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it makes the necessary updates for airspace areas within the National Airspace System.

History

Federal Aviation Administration Airspace Order JO 7400.11, Airspace Designations and Reporting Points, incorporated by reference in 14 CFR 71.1, is published yearly. Amendments referred to as ''effective date straddling amendments'' were published under Order JO 7400.11E (dated July 21, 2020, and effective September 15, 2020) but became effective under Order JO 7400.11F (dated August 10, 2021, and effective September 15, 2021). This action incorporates these rules into the current FAA Order JO 7400.11F.

Accordingly, as this is an administrative correction to update final rule amendments into FAA Order JO 7400.11F, notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Also, to bring these rules and legal descriptions current, I find that good cause exists, under 5 U.S.C. 553(d), for making this amendment effective in less than 30 days.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021. FAA Order JO 7400.11F is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11F lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends 14 CFR part 71 by incorporating certain final rules into the current FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, which are depicted on aeronautical charts.

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

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Corrections

■ 1. For Docket No. FAA–2021–0226; Airspace Docket No. 20–AAL–2 (86 FR 43589; August 10, 2021)

Correction

■ a. On page 43589, column 1, line 43, and column 2, line 1, under **ADDRESSES**, ''. . . FAA Order 7400.11E . . .'' is corrected to read ''. . . FAA Order JO 7400.11F . . .''.

■ b. On page 43589, column 3, line 7, and line 10, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order 7400.11E . . .'' is corrected to read ''. . . FAA Order JO 7400.11F . . .''.

■ c. On page 43589, column 2, line 52, under History, ''. . . FAA Order 7400.11E, dated July 21, 2020, and effective September 15, 2020, . . .'' is corrected to read ''. . . FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021 . . .''.

■ d. On page 43589, column 3, line 4, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order 7400.11E Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, . . .'' is corrected to read ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .''.

§ 71.1 [Corrected]

■ e. On page 43590, column 1, line 42, under Amendatory Instruction 2, ''. . . FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, . . .'' is corrected to read ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .''.

■ 2. For Docket No. FAA–2021–0275; Airspace Docket No. 20–AAL–39 (86 FR 43911; August 11, 2021)

Correction

■ a. On page 43911, column 3, line 31, and line 44, under **ADDRESSES**, ''. . . FAA Order 7400.11E . . .'' is corrected to read ''. . . FAA Order JO 7400.11F . . .''.

■ b. On page 43912, column 1, line 47, and line 50, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order 7400.11E . . .'' is corrected to read ''. . . FAA Order JO 7400.11F . . .''.

■ c. On page 43912, column 1, line 35, under History, ''. . . FAA Order 7400.11E, dated July 21, 2020, and effective September 15, 2020, . . .'' is corrected to read ''. . . FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021 . . .''.

■ d. On page 43912, column 1, line 44, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order 7400.11E Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, . . .'' is corrected to read ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .''.

§ 71.1 [Corrected]

■ e. On page 43912, column 3, line 37, under Amendatory Instruction 2, ''. . . FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, . . .'' is corrected to read ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .''.

■ 3. For Docket No. FAA–2021–0002; Airspace Docket No. 21–ASW–3 (86 FR 45630; August 16, 2021)

Correction

■ a. On page 45630, column 1, line 26, and line 39, under **ADDRESSES**, ''. . . FAA Order 7400.11E . . .'' is corrected to read ''. . . FAA Order JO 7400.11F . . .''.

■ b. On page 45630, column 2, line 39, and line 42, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order 7400.11E . . .'' is corrected to read ''. . . FAA Order JO 7400.11F . . .''.

■ c. On page 45630, column 2, line 26, under History, ''. . . FAA Order 7400.11E, dated July 21, 2020, and effective September 15, 2020, . . .'' is corrected to read ''. . . FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021 . . .''.

■ d. On page 45630, column 2, line 36, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order 7400.11E Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, . . .'' is corrected to read ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .''.

§ 71.1 [Corrected]

■ e. On page 45630, column 3, line 56, under Amendatory Instruction 2, ''. . . FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, . . .'' is corrected to read ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .''.

■ 4. For Docket No. FAA–2020–0889; Airspace Docket No. 20–ASO–25 (86 FR 46774; August 20, 2021)

Correction

■ a. On page 46774, column 1, line 56, under History, ''. . . FAA Order 7400.11E, dated July 21, 2020, and effective September 15, 2020, . . .'' is corrected to read ''. . . FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021 . . .''.

§ 71.1 [Corrected]

■ b. On page 46774, column 3, line 12, under Amendatory Instruction 2, ''. . . FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, . . .'' is corrected to read ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .''.

■ 5. For Docket No. FAA–2021–0075; Airspace Docket No. 21–ASO–2 (86 FR 48018; August 27, 2021)

Correction

■ a. On page 48019, column 1, line 1, and line 14, under **ADDRESSES**, ''. . . FAA Order 7400.11E . . .'' is corrected to read ''. . . FAA Order JO 7400.11F . . .''.

■ b. On page 48019, column 1, line 16, and line 19, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order 7400.11E . . .'' is corrected to read ''. . . FAA Order JO 7400.11F . . .''.

■ c. On page 48019, column 2, line 3, under History, ''. . . FAA Order 7400.11E, dated July 21, 2020, and effective September 15, 2020, . . .'' is corrected to read ''. . . FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021 . . .''.

■ d. On page 48019, column 2, line 13, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order 7400.11E Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, . . .'' is corrected to read ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .''.

§ 71.1 [Corrected]

■ e. On page 48019, column 3, line 40, under Amendatory Instruction 2, ''. . . FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, . . .'' is corrected to read ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .''.

■ 6. For Docket No. FAA–2021–0171; Airspace Docket No. 21–ASO–4 (86 FR 48495; August 31, 2021)

Correction

■ a. On page 48495, column 3, line 19, and line 32, under **ADDRESSES**, ''. . . FAA Order 7400.11E . . .'' is corrected to read ''. . . FAA Order JO 7400.11F . . .''.

■ b. On page 48496, column 1, line 31, and line 34, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order 7400.11E . . .'' is corrected to read ''. . . FAA Order JO 7400.11F . . .''.

■ c. On page 48496, column 1, line 18, under History, ''. . . FAA Order 7400.11E, dated July 21, 2020, and effective September 15, 2020, . . .'' is corrected to read ''. . . FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021 . . .''.

■ d. On page 48496, column 1, line 28, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order 7400.11E Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, . . .'' is corrected to read ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .''.

§ 71.1 [Corrected]

■ e. On page 36211, column 2, line 56, under Amendatory Instruction 2, ''. . . FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, . . .'' is corrected to read ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .''.

■ 7. For Docket No. FAA–2021–0424; Airspace Docket No. 21–ACE–13 (86 FR 49917; September 7, 2021)

Correction

■ a. On page 49917, column 2, line 46, and line 59, under **ADDRESSES**, ''. . . FAA Order 7400.11E . . .'' is corrected to read ''. . . FAA Order JO 7400.11F . . .''.

■ b. On page 49917, column 3, line 52, and line 55, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order 7400.11E . . .'' is corrected to read ''. . . FAA Order JO 7400.11F . . .''.

■ c. On page 49917, column 3, line 39, under History, ''. . . FAA Order 7400.11E, dated July 21, 2020, and effective September 15, 2020, . . .'' is corrected to read ''. . . FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021 . . .''.

■ d. On page 49917, column 3, line 49, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order 7400.11E Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, . . .'' is corrected to read ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .''.

§ 71.1 [Corrected]

■ e. On page 49918, column 2, line 6, under Amendatory Instruction 2, ''. . . FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, . . .'' is corrected to read ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .''.

■ 8. For Docket No. FAA–2021–0472; Airspace Docket No. 21–AEA–9 (86 FR 49919; September 7, 2021)

Correction

■ a. On page 49919, column 3, line 27, and line 40, under **ADDRESSES**, ''. . .

FAA Order 7400.11E . . .'' is corrected to read ''. . . FAA Order JO 7400.11F . . .''.

■ b. On page 49920, column 1, line 42, and line 45, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order 7400.11E . . .'' is corrected to read ''. . . FAA Order JO 7400.11F . . .''.

■ c. On page 49920, column 1, line 29, under History, ''. . . FAA Order 7400.11E, dated July 21, 2020, and effective September 15, 2020, . . .'' is corrected to read ''. . . FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021 . . .''.

■ d. On page 49920, column 1, line 39, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order 7400.11E Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, . . .'' is corrected to read ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .''.

§ 71.1 [Corrected]

■ e. On page 49920, column 2, line 54, under Amendatory Instruction 2, ''. . . FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, . . .'' is corrected to read ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .''.

■ 9. For Docket No. FAA–2021–0278; Airspace Docket No. 21–ACE–10 (86 FR 49918; September 7, 2021)

Correction

■ a. On page 49918, column 3, line 1, and line 14, under **ADDRESSES**, ''. . . FAA Order 7400.11E . . .'' is corrected to read ''. . . FAA Order JO 7400.11F . . .''.

■ b. On page 49919, column 1, line 15, and line 18, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order 7400.11E . . .'' is corrected to read ''. . . FAA Order JO 7400.11F . . .''.

■ c. On page 49918, column 3, line 63, under History, ''. . . FAA Order 7400.11E, dated July 21, 2020, and effective September 15, 2020, . . .'' is corrected to read ''. . . FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021 . . .''.

■ d. On page 49919, column 1, line 12, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order 7400.11E Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, . . .'' is corrected to read ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .''.

§ 71.1 [Corrected]

■ e. On page 49919, column 2, line 32, under Amendatory Instruction 2, ''. . . FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, . . .'' is corrected to read ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .''.

■ 10. For Docket No. FAA–2021–0161; Airspace Docket No. 21–ASW–5 (86 FR 50244; September 8, 2021)

Correction

■ a. On page 50244, column 3, line 8, and line 21, under **ADDRESSES**, ''. . . FAA Order 7400.11E . . .'' is corrected to read ''. . . FAA Order JO 7400.11F . . .''.

■ b. On page 50245, column 1, line 17, and line 20, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order 7400.11E . . .'' is corrected to read ''. . . FAA Order JO 7400.11F . . .''.

■ c. On page 50245, column 1, line 4, under History, ''. . . FAA Order 7400.11E, dated July 21, 2020, and effective September 15, 2020, . . .'' is corrected to read ''. . . FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021 . . .''.

■ d. On page 50245, column 1, line 14, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order 7400.11E Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, . . .'' is corrected to read ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .''.

§ 71.1 [Corrected]

■ e. On page 50245, column 2, line 32, under Amendatory Instruction 2, ''. . . FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, . . .'' is corrected to read ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .''.

■ 11. For Docket No. FAA–2021–0169; Airspace Docket No. 21–ASO–3 (86 FR 50245; September 8, 2021)

Correction

■ a. On page 50245, column 3, line 46, and line 59, under **ADDRESSES**, ''. . . FAA Order 7400.11E . . .'' is corrected to read ''. . . FAA Order JO 7400.11F . . .''.

■ b. On page 50246, column 1, line 66, and column 2 line 3, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order 7400.11E . . .'' is corrected to read ''. . . FAA Order JO 7400.11F . . .''.

■ c. On page 50246, column 1, line 53, under History, ''. . . FAA Order 7400.11E, dated July 21, 2020, and effective September 15, 2020, . . .'' is corrected to read ''. . . FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021 . . .''.

■ d. On page 50246, column 1, line 63, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order 7400.11E Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, . . .'' is corrected to read ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .''.

§ 71.1 [Corrected]

■ e. On page 50246, column 3, line 58, under Amendatory Instruction 2, ''. . . FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, . . .'' is corrected to read ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .''.

■ 12. For Docket No. FAA–2021–0277; Airspace Docket No. 21–AGL–19 (86 FR 50248; September 8, 2021)

Correction

■ a. On page 50249, column 1, line 12, and line 25, under **ADDRESSES**, ''. . . FAA Order 7400.11E . . .'' is corrected to read ''. . . FAA Order JO 7400.11F . . .''.

■ b. On page 50249, column 2, line 22, and line 25, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order 7400.11E . . .'' is corrected to read ''. . . FAA Order JO 7400.11F . . .''.

■ c. On page 50249, column 2, line 9, under History, ''. . . FAA Order 7400.11E, dated July 21, 2020, and effective September 15, 2020, . . .'' is

corrected to read ''. . . FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021 . . .''.

■ d. On page 50249, column 2, line 19, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order 7400.11E Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, . . .'' is corrected to read ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .''.

§ 71.1 [Corrected]

■ e. On page 50249, column 3, line 34, under Amendatory Instruction 2, ''. . . FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, . . .'' is corrected to read ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .''.

■ 13. For Docket No. FAA–2021–0235; Airspace Docket No. 21–AGL–18 (86 FR 50453; September 9, 2021)

Correction

■ a. On page 50453, column 2, line 27, and line 40, under **ADDRESSES**, ''. . . FAA Order 7400.11E . . .'' is corrected to read ''. . . FAA Order JO 7400.11F . . .''.

■ b. On page 50453, column 3, line 38, and line 41, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order 7400.11E . . .'' is corrected to read ''. . . FAA Order JO 7400.11F . . .''.

■ c. On page 50453, column 3, line 25, under History, ''. . . FAA Order 7400.11E, dated July 21, 2020, and effective September 15, 2020, . . .'' is corrected to read ''. . . FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021 . . .''.

■ d. On page 50453, column 3, line 35, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order 7400.11E Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, . . .'' is corrected to read ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .''.

§ 71.1 [Corrected]

■ e. On page 50454, column 1, line 50, under Amendatory Instruction 2, ''. . . FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, . . .'' is corrected to read ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .''.

■ 14. For Docket No. FAA–2021–0160; Airspace Docket No. 21–ACE–7 (86 FR 50250; September 8, 2021)

Correction

■ a. On page 50250, column 1, line 26, and line 39, under **ADDRESSES**, ''. . . FAA Order 7400.11E . . .'' is corrected to read ''. . . FAA Order JO 7400.11F . . .''.

■ b. On page 50250, column 2, line 39, and line 42, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order 7400.11E . . .'' is corrected to read ''. . . FAA Order JO 7400.11F . . .''.

■ c. On page 50250, column 2, line 26, under History, ''. . . FAA Order 7400.11E, dated July 21, 2020, and effective September 15, 2020, . . .'' is corrected to read ''. . . FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021 . . .''.

■ d. On page 50250, column 2, line 36, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order 7400.11E Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, . . .'' is corrected to read ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .''.

§ 71.1 [Corrected]

■ e. On page 50250, column 3, line 53, under Amendatory Instruction 2, ''. . . FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, . . .'' is corrected to read ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . . ''.

■ 15. For Docket No. FAA–2021–0159; Airspace Docket No. 21–ACE–6 (86 FR 50247; September 8, 2021)

Correction

■ a. On page 50247, column 3, line 55, and on page 50248, column 1, line 6, under **ADDRESSES**, ''. . . FAA Order 7400.11E . . .'' is corrected to read ''. . . FAA Order JO 7400.11F . . .''.

■ b. On page 50248, column 2, line 2, and line 5, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order 7400.11E . . .'' is corrected to read ''. . . FAA Order JO 7400.11F . . .''.

■ c. On page 50248, column 1, line 55, under History, ''. . . FAA Order 7400.11E, dated July 21, 2020, and effective September 15, 2020, . . .'' is corrected to read ''. . . FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021 . . .''.

■ d. On page 50248, column 1, line 64, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order 7400.11E Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, . . .'' is corrected to read ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .''.

§ 71.1 [Corrected]

■ e. On page 50248, column 3, line 18, under Amendatory Instruction 2, ''. . . FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, . . .'' is corrected to read ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .''.

■ 16. For Docket No. FAA–2021–0529; Airspace Docket No. 21–ASO–18 (86 FR 50614; September 10, 2021)

Correction

■ a. On page 50614, column 2, line 34, and line 47, under **ADDRESSES**, ''. . . FAA Order 7400.11E . . .'' is corrected to read ''. . . FAA Order JO 7400.11F . . .''.

■ b. On page 50614, column 3, line 46, and line 49, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order 7400.11E . . .'' is corrected to read ''. . . FAA Order JO 7400.11F . . .''.

■ c. On page 50614, column 3, line 33, under History, ''. . . FAA Order 7400.11E, dated July 21, 2020, and effective September 15, 2020, . . .'' is corrected to read ''. . . FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021 . . .''.

■ d. On page 50614, column 3, line 43, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order 7400.11E Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, . . .'' is corrected to read ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021 . . .''.

§ 71.1 [Corrected]

■ e. On page 50615, column 1, line 56, under Amendatory Instruction 2, ''. . . FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, . . .'' is corrected to read ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021 . . .''.

■ 17. For Docket No. FAA–2021–0471; Airspace Docket No. 21–AGL–25 (86 FR 50842; September 13, 2021)

Correction

■ a. On page 50842, column 2, line 42, and line 55, under **ADDRESSES**, ''. . . FAA Order 7400.11E . . .'' is corrected to read ''. . . FAA Order JO 7400.11F . . .''.

■ b. On page 50842, column 3, line 33, and line 36, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order 7400.11E . . .'' is corrected to read ''. . . FAA Order JO 7400.11F . . .''.

■ c. On page 50842, column 3, line 20, under History, ''. . . FAA Order 7400.11E, dated July 21, 2020, and effective September 15, 2020, . . .'' is corrected to read ''. . . FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021 . . .''.

■ d. On page 50842, column 3, line 30, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order 7400.11E Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, . . .'' is corrected to read ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021 . . .''.

§ 71.1 [Corrected]

■ e. On page 50843, column 1, line 56, under Amendatory Instruction 2, ''. . . FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, . . .'' is corrected to read ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021 . . .''.

■ 18. For Docket No. FAA–2021–0069; Airspace Docket No. 21–ASO–1 (86 FR 50843; September 13, 2021)

Correction

■ a. On page 50843, column 2, line 45, and line 58, under **ADDRESSES**, ''. . . FAA Order 7400.11E . . .'' is corrected to read ''. . . FAA Order JO 7400.11F . . .''.

■ b. On page 50843, column 3, line 61, and line 64, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order 7400.11E . . .'' is corrected to read ''. . . FAA Order JO 7400.11F . . .''.

■ c. On page 50843, column 3, line 48, under History, ''. . . FAA Order 7400.11E, dated July 21, 2020, and effective September 15, 2020, . . .'' is corrected to read ''. . . FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021 . . .''.

■ d. On page 50843, column 3, line 58, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order 7400.11E Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, . . .'' is corrected to read ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021 . . .''.

§ 71.1 [Corrected]

■ e. On page 50844, column 2, line 6, under Amendatory Instruction 2, ''. . . FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, . . .'' is corrected to read ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021 . . .''.

Issued in Washington, DC on November 17, 2021.

Michael R. Beckles,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2021–25495 Filed 11–23–21; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[EPA–HQ–TRI–2016–0390; FRL–5879–02–OCSPP]

RIN 2070–AK16

Addition of Natural Gas Processing Facilities to the Toxics Release Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is adding natural gas processing (NGP) facilities (also known as natural gas liquid extraction facilities) to the scope of the industrial sectors covered by the reporting requirements of the Emergency Planning and Community Right-to-Know Act (EPCRA), commonly known as the Toxics Release Inventory (TRI), and the Pollution Prevention Act (PPA). Adding these facilities will meaningfully increase the information available to the public on releases and other waste management of listed chemicals from the NGP sector and further the purposes of EPCRA.

DATES: This final rule is effective December 27, 2021 and shall apply for the reporting year beginning January 1, 2022 (reports due July 1, 2023).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–TRI–2016–0390, is available at *http://www.regulations.gov* or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

Due to the public health emergency, the EPA Docket Center (EPA/DC) and Reading Room are by appointment only. For the latest status information on EPA/DC services and docket access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Daniel R. Ruedy, Data Gathering and Analysis Division, Mail Code 7410M, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–7974; email address: *ruedy.daniel@epa.gov.*

For general information contact: The Emergency Planning and Community Right-to-Know Act Hotline; telephone numbers: Toll free at (800) 424–9346 (select menu option 3) or (703) 348–5070 in the Washington, DC Area and International; or go to *https://www.epa.gov/home/epa-hotlines.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

Entities potentially regulated by this action are those facilities that primarily engage in the recovery of liquid

hydrocarbons from oil and gas field gases and which manufacture, process, or otherwise use chemicals listed at 40 CFR 372.65 and meet the reporting requirements of EPCRA section 313, 42 U.S.C. 11023, and PPA section 6607, 42 U.S.C. 13106. These facilities are categorized under Standard Industrial Classification (SIC) code 1321 and North American Industry Classification System (NAICS) code 211130. In response to OMB's revisions to the NAICS codes effective January 1, 2017, EPA amended 40 CFR part 372 to include the relevant 2017 NAICS codes for TRI reporting. EPA also modified the list of exceptions and limitations previously included in the CFR for the applicable NAICS codes for TRI reporting purposes.

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

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

This action is taken under EPCRA sections 313(b) and 328, 42 U.S.C. 11023(b) and 11048. Specifically, EPCRA section 313(b)(1)(B), 42 U.S.C. 11023(b)(1)(B), states that the Agency may ''add or delete Standard Industrial Codes for purposes of subparagraph (A), but only to the extent necessary to provide that each Standard Industrial Code is relevant to the purposes of this section.'' In addition, Congress granted EPA broad rulemaking authority under EPCRA section 328, 28 U.S.C. 11048, which provides that the ''Administrator may prescribe such regulations as may be necessary to carry out this chapter.''

C. What action is the Agency taking?

EPA is adding NGP facilities to the list of industry sectors subject to reporting under EPCRA section 313 and PPA section 6607. With this addition, NGP facilities will be subject to TRI reporting for the year beginning January 1, 2022, and required to file reports by July 1, 2023.

D. Why is the Agency taking this action?

EPA is adding this industry sector to the EPCRA section 313 list because doing so will meaningfully increase the information available to the public on releases and other waste management of listed chemicals from the NGP sector and further the purposes of EPCRA section 313. In total, there are approximately 1.4 million people living within three miles of at least one of the NGP facilities EPA identified. As detailed in Unit IV.C. of this notice, some NGP facilities are located in communities where there are potential Environmental Justice considerations.

This action also addresses a petition (Ref. 1) submitted to EPA via a letter dated October 24, 2012, from the Environmental Integrity Project (EIP), together with 16 other organizations, and later joined by two additional organizations (collectively, Petitioners) under section 553(e) of the Administrative Procedure Act (APA) that asked EPA to add the Oil and Gas Extraction industrial sector (SIC code 13) to the scope of industrial sectors covered by the reporting requirements of the TRI. On October 22, 2015, EPA granted, in part, the petition insofar as it requested that EPA commence the rulemaking process to propose adding NGP facilities to the scope of TRI. EPA denied the remainder of the petition. The petition and related documents, including EPA's response, can be found in Docket ID No. EPA–HQ–TRI–2013–0281.

E. What are the incremental costs and benefits of this action?

EPA considered the incremental costs and benefits associated with this rulemaking. EPA estimates the total incremental costs to be approximately $11,846,000 to $18,044,000 in the first year and approximately $5,641,000 to $8,593,000 in the steady state. In addition, EPA performed a screening analysis on small entities and determined this rulemaking will not have a significant economic impact on a substantial number of small entities. A more detailed discussion is included in Unit IV.C.

F. Are there potentially disproportionate impacts for children health?

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

G. What are the environmental justice impacts?

This regulatory action changes reporting requirements for NGP facilities and does not have any direct impact on human health or the environment. However, for communities living near NGP facilities, there is the potential for new information about toxic chemical releases and waste management practices occurring in those communities to become available through the TRI reporting data. A more detailed discussion is included in Unit IV. C.

II. Background

As discussed in the proposed rule of January 6, 2017 (82 FR 1651) (FRL–9953–68) (Ref. 2), EPA proposed to add NGP facilities to the scope of the industrial sectors covered by the reporting requirements of section 313 of EPCRA and section 6607 of the PPA. In the proposed rule, the Agency asserted that adding these facilities would meaningfully increase the information available to the public on releases and other waste management of listed chemicals from the NGP sector and further the purposes of EPCRA section 313. In the proposed rule, EPA estimated in 2017 that at least 282 NGP facilities in the U.S. would meet the TRI employee threshold (10 full-time employees or equivalent) and manufacture, process, or otherwise use (threshold activities) at least one TRI-listed chemical in excess of applicable threshold quantities. Collectively, NGP facilities in the U.S. manufacture, process, or otherwise use at least 21 different TRI-listed chemicals, including n-hexane, hydrogen sulfide, toluene, benzene, xylene, and methanol.

III. Response to Comments

Upon publication of the proposed rule, EPA initially provided a 60-day comment period. EPA then granted an additional 60 days to allow interested parties further time to prepare their comments (82 FR 12924) (FRL–9959–41). The public comment period for the proposed rule closed on May 6, 2017. EPA received 5,933 comments on the proposed rule.

The Agency received 5,470 duplicate or significantly similar comments, leaving 463 unique comments received, of which 25 comments received were substantive and related to the proposal. Eleven of those comments were submitted by private citizens, one of which was submitted anonymously (Docket ID EPA–HQ–TRI–2016–0127, 0202, 0218, 0251, 0268, 0269, 0393, 0452, 0453, 0470, 0486). Three comments submitted by industry groups requested an extension to the original comment period (0023, 0024, 0025). Comments were submitted from the following public interest non-governmental organizations (NGOs): Environmental Action Center (EAC) (0343), Earthworks (0375), Environmental Integrity Project (EIP) (0334), Westmoreland Marcellus Citizens' Group (0435), and Western Governors' Association (0481).

Comments were also received from the following industry groups: American Petroleum Institute (API) (0483), GPA Midstream (0475), Marcellus Shale Coalition (0474), MarkWest (0484), and the Texas Pipeline Association (TPA) (0478). A comment received from Black Warrior Riverkeeper (0292) was not relevant to the proposed action.

Comments received from the public interest mass mail campaigns were supportive of the proposed rule. With the exception of Western Governors' Association, all comments received from private citizens and public interest NGOs were supportive of the proposed rule, although some provided recommendations to include more information in the final rule. Comments received from industry groups were not supportive of the rule. EPA's responses to all substantive comments relevant to the proposed rule are detailed in the remainder of this Unit.

A. Petition Not Authorized by Law

1. Comment

Several commenters argued that the Petition that EIP submitted to EPA was not authorized by law and therefore should neither have been considered nor granted in part. Commenters stated that the statutory provisions for TRI-related petitions are in EPCRA, are only intended for changes to the chemical list, and do not allow the public to petition for changes to the list of industry sectors that are subject to TRI reporting requirements. One commenter stated that the Congressional implication, therefore, is that other types of petitions involving TRI are not allowed. Other commenters stated that the Agency failed to address many considerations that are relevant to the decision to add NGP facilities to the industry sector list for EPCRA section 313 TRI reporting.

2. EPA Response

The Agency disagrees with the commenters' arguments that the Petition that EIP submitted to EPA was not authorized by law and should not have been granted in part. The Administrative Procedure Act (APA) governs the process by which federal agencies develop and issue regulations. The APA includes requirements for publishing notices of proposed and final rulemaking in the **Federal Register**, and it provides opportunities for the public to comment on notices of proposed rulemaking. Under the APA, federal agencies must give interested persons the right to petition for the issuance, amendment, or repeal of a rule. 5 U.S.C. 553(e). Accordingly, EIP submitted the petition under the APA to request that EPA issue a rule to add oil and gas industry sectors to the scope of the TRI program. That EPCRA also provides citizens the opportunity to petition EPA for specific rulemaking actions, specifically to request that the Agency modify the list of chemicals applicable to TRI reporting requirements, does not supplant the general petition process that the APA provides. Rather, the specific EPCRA petition procedure provides a specific timeframe and requirements for petitions that request changes to the TRI list of covered chemicals.

EPCRA section 313(b)(1)(B), 42 U.S.C. 11023(b)(1)(B), states that EPA ''may add or delete [SIC] Codes . . . to the extent necessary to provide that each [SIC] code to which this section applies is relevant to the purposes of [the TRI].'' In addition, Congress granted EPA broad rulemaking authority under EPCRA section 328, 28 U.S.C. 11048, to ''prescribe such regulations as may be necessary to carry out this chapter.''

The addition of NGP facilities to the scope of the industrial sectors covered by the reporting requirements of EPCRA section 313 will meaningfully increase the information available to the public on releases and other waste management of listed chemicals from the NGP sector. Thus, addition of this industrial sector is relevant and necessary to carry out the purposes of the TRI.

B. Inadequate Notice

1. Comment

Some commenters believed that there was a lack of time, both to submit comments on the proposed rule and to comply with the rule if finalized. These commenters argued that there was not sufficient time for them to adequately analyze all the supporting documents related to the proposed rule and that historically the Agency held extensive outreach prior to releasing any proposal to add additional sectors required to report to TRI. One commenter requested the EPA ''allow sufficient lead time to comply with the rule'' if finalized, recommending reports not be due until at least 2019 (0475). One commenter stated that a consultation with states within which these facilities operate should have occurred to determine the necessity of adding NGP facilities to the TRI, considering the presence of state regulations.

2. EPA Response

EPA provided adequate notice to all interested stakeholders, including the public, industry, and the States, regarding its proposal to add NGP facilities to the scope of TRI. On October 24, 2012, the EIP and sixteen other organizations submitted a Petition to EPA, requesting that the Agency add the Oil and Gas Extraction sector, SIC code 13, to the scope of sectors covered by TRI under section 313 of EPCRA. EPA published a **Federal Register** notice on January 3, 2014 (79 FR 393) (FRL–9904–82–OEI) acknowledging receipt of the petition from EIP and placing the Petition in the public docket. On February 25, 2014, API met with EPA to better understand EPA's intentions for the petition. The Agency also received comments submitted from industry trade groups in response to the EIP petition, which EPA made available in the public docket.

On October 22, 2015, EPA granted, in part, the petition insofar as it requested that EPA commence the rulemaking process to propose adding NGP facilities to the scope of TRI Ref. 3) and published its response in the public docket. On January 6, 2017, the Agency proposed to add NGP facilities to the scope of the industrial sectors covered by the reporting requirements of EPCRA section 313. The initial 60-day comment period was January 6 to March 7, 2017. In response to requests from multiple stakeholders, the Agency extended the comment period for an additional 60 days from March 7, 2017 to May 6, 2017. Therefore, there was sufficient notice for the proposal of adding NGP facilities to TRI. States also had sufficient time to comment and request consultation with the Agency. Further, TRI is a federal program designed to provide information to the public and decisionmakers across all governmental levels. TRI reporting requirements do not conflict with state regulation of NGP facilities; rather, they help inform such regulation.

EPA agrees that sufficient lead time should be provided to comply with the final rule, and has provided sufficient time in the rule finalized in this action. EPCRA 313(a) provides that reporting shall be submitted annually on or before July 1 and shall contain data reflecting waste management occurring during the preceding calendar year. Accordingly, this final rule is effective December 27, 2021 and shall apply for the reporting year beginning January 1, 2022, such that the first reports are due July 1, 2023. This timeframe provides ample time for facilities to make reasonable estimates of releases and waste management quantities for chemicals that they manufacture, process, or otherwise use.

C. Scope of Addition too Narrow

1. Comment

One commenter suggested that EPA expand the description of the proposed rule from mostly focusing on why it is adding NGP facilities to the scope of industries required to report under TRI, to also encompassing reasons for not requiring the rest of the Oil and Gas Extraction Industry sector to report under TRI. Another commenter asserted that the proposed rule did not sufficiently explain why it limits the scope of the addition to NGP facilities alone, and that while EPA explains that it will add NGP facilities to the list of TRI reporting industries, the Agency insufficiently explains what this limited scope means for chemical release data reporting and why the Agency decided on such a limited scope.

2. EPA Response

In its response to the EIP Petition, the Agency provided its rationale for proposing to add only NGP facilities from the Oil and Gas Extraction sector at that time. As detailed in EPA's rationale in the Petition Response (available at *https://www.regulations.gov/document/EPA-HQ-TRI-2013-0281-0047* in *regulations.gov*), considerations of the EPCRA statutory definition of ''facility,'' as well as numerous other EPA activities addressing the oil and gas sector, warranted focusing this rulemaking on NGP facilities specifically.

D. Data Used To Evaluate NGP Facilities

1. Comment

Several comments from industry suggested that the data EPA evaluated to support the proposed addition of NGP facilities were used improperly and incorrectly identified the number of U.S. NGP facilities that may trigger TRI reporting requirements. For example, in Table 2.2 of EPA's economic analysis for the proposed rule (Ref. 4), EPA based its estimates of chemical forms TRI would receive on the number of facilities Canada's National Pollutant Release Inventory (NPRI), a program analogous to TRI, already covers that would be required to report (estimating that it would receive 242 forms from 31 reporting facilities with 10 or more full-time employees (FTEs) and reporting a TRI chemical, or 7.81 forms per facility). API contends that EPA should have included in its estimates those facilities with fewer than 10 FTEs, not reporting a TRI chemical, that would thus not report to TRI, (which would result in less than one form per facility). API contends that this shows the reporting would provide little benefit to further the purposes of EPCRA section 313.

2. EPA Response

EPA analyzed data from multiple sources and used modeling techniques to identify the estimated universe of NGP facilities that could trigger TRI reporting requirements if EPA were to add NGP facilities to the scope of industrial sectors covered by TRI (Ref. 4). These data sources included the U.S. Energy Information Administration survey (EIA–757 survey), Canada's NPRI, EPA's Risk Management Plan (RMP) Program, and EPA's Greenhouse Gas Reporting Program (GHGRP). Based on these datasets, EPA estimated that NGP facilities in the U.S. collectively manufacture, process, or otherwise use more than 21 different TRI-listed chemicals. These chemicals include n-hexane, hydrogen sulfide, toluene, benzene, xylene, and methanol. Since the proposed rule, EPA updated its analysis and now estimates that between 321 and 489 NGP facilities in the U.S. would meet the TRI employee threshold (10 full-time employees or equivalent) and manufacture, process, or otherwise use at least one TRI-listed chemical in excess of applicable threshold quantities (Ref. 5). Thus, because EPA is basing its estimates of facilities that would report to TRI only on the counts of NGP facilities with 10 or more full-time employees or equivalent and not the entire universe of NGP facilities in the U.S., EPA's estimated facility counts are commensurable with the 31 NPRI facilities and associated forms-per-facility ratios identified in the NPRI data. EPA's analysis clearly establishes that there are facilities within the candidate NGP industry group whose reporting can reasonably be anticipated to increase the information made available pursuant to EPCRA section 313, or otherwise further the purpose of EPCRA section 313. Furthermore, based upon information submitted to the NPRI and the 2017 EIA–757 survey of NGP facilities, as well as based on EPA's understanding of the sector, EPA expects that TRI reporting by U.S. NGP facilities will provide substantial release and waste management data.

E. Improper Use of Canada's NPRI Data by EPA To Evaluate NGP Facilities

1. Comment

There were a few commenters who believed that EPA improperly used Canada's NPRI data to evaluate NGP facilities in the U.S. The commenters believe that EPA's use of the NPRI data overestimated the number of NGP facilities and number of TRI chemicals that would trigger thresholds to be reported under EPCRA section 313. One commenter expressed concern that EPA utilized NPRI data selectively by using it only to identify chemicals used in the NGP industry, but not to recognize from those same NPRI data that reported releases are almost exclusively to air, are therefore already reported to air emissions programs, and no releases to other media or other unique information would be reported to TRI (0334). Another commenter, though supportive of the rule, recommended EPA base its information factor conclusion on evidence from the actual facilities it would regulate rather than surrogate data from the NPRI.

2. EPA Response

EPA disagrees that it improperly used Canada's NPRI data. The NPRI data provide information on what chemicals and associated quantities are universally used in the NGP industry. EPA used the NPRI data alongside other domestic information sources (*e.g.,* EIA–757) to estimate what chemicals and associated quantities are likely used by NGP facilities in the U.S. As detailed in Unit III.G.2 of this notice, data reported to TRI include releases to media, including air, but also many other data elements—such as pollution prevention and other source reduction activities—not reported to air programs. That releases reported by Canadian NGP facilities to NPRI are predominantly to air does not render EPA's inferences on chemical usage improper or unsound, nor does it have a bearing on the utility of air emissions data and associated information reported to TRI. As stated in Unit III.G.2 of this notice, TRI is a nationwide database that places data in a central, publicly accessible location. Further, TRI data provide unique benefits in that they are collected annually; they reflect chemical emissions to multimedia, including air, water, and land; and they encompass source reduction and other pollution practices. Simply put, TRI reporting involves more than reporting on releases to air, and increasing the TRI dataset to include reporting from NGP facilities would provide access to data not otherwise available from other programs, and in a format that is readily accessible and designed for public use.

F. Prior Decision To Not Include Additional Oil and Gas Industry Sectors

1. Comment

One commenter expressed concern that EPA did not provide sufficient

justification as to why the inclusion of NGP facilities under TRI should be revisited and why NGP facilities should ultimately be made subject to EPCRA section 313 reporting. Two other commenters, though in support of the rule, recommended that EPA reconsider its decision to limit the scope of the addition to processing facilities, and instead include extraction and mid-stream compressor facilities. Another commenter suggested that EPA include its rationale in the final rule for limiting the scope of the proposed addition to processing facilities.

2. EPA Response

EPA disagrees that it has not provided sufficient justification for revisiting the inclusion of NGP facilities under TRI. In its 1997 sector addition rulemaking, EPA considered the addition of the oil and gas industry group to TRI. At that time, EPA indicated that one consideration for not including the industry group was concern over how a ''facility'' would be defined for purposes of reporting in EPCRA section 313 (61 FR 33592) (FRL–5379–3). That issue, in addition to other questions, led EPA to not include, at the time, the oil and gas industry group as a whole.

However, EPA has since determined that NGP facilities are appropriate for addition to the scope of TRI. The triennial survey of NGP facilities by the by the EIA (EIA–757 survey) (Ref. 6), identifies 478 NGP facilities in the lower 48 states as of 2017. The continued growth of natural gas production since 2014 also provides justification for revisiting the inclusion of NGP facilities (Ref. 5). EPA estimated that over half of those facilities would annually meet TRI reporting thresholds and, if covered by the reporting requirements of TRI, be required to submit TRI information to EPA. The information likely to be obtained from these facilities is not readily available elsewhere.

As described in the petition response (Ref. 3), when the three factors that EPA considered in the 1997 TRI sector addition (Ref. 7) are applied to NGP facilities, the chemical factor and activity factor are met by most NGP facilities—many TRI-listed chemicals are regularly manufactured, processed, or otherwise used at these facilities. With respect to the information factor (*i.e.,* the third factor), the addition of NGP facilities to TRI would meaningfully increase the information available to the public and further the purposes of EPCRA section 313. As stated in Unit III.B.1 of this notice, using information from Canada's NPRI, a program analogous to TRI and which covers NGP facilities, EPA estimates that NGP facilities in the U.S. collectively manufacture, process, or otherwise use more than 21 different TRI-listed chemicals. These chemicals include n-hexane, hydrogen sulfide, toluene, benzene, xylene, and methanol. In contrast, related facilities, such as extraction or compressor facilities, are not likely to meet the TRI full-time employee or activity thresholds, as EPA concluded in the 1997 TRI sector addition (Ref. 7).

Because TRI coverage of NGP facilities would meet the chemical, activity, and information factors, and based on the number of NGP facilities that would be required to report to TRI, the Agency has provided adequate rationale for their addition to TRI.

G. The Addition the Rule Proposes Is Not Relevant to the Purposes of TRI

1. Comment

Some commenters stated that the proposed rule would provide redundant data, and it is unnecessary to include NGP facilities on TRI because other regulatory programs already collect these data. Commenters assert that much of these data are already in the public domain and that NGP facilities already report spills and releases, track waste disposal activities, and obtain air permits and report deviations from permit conditions. In addition, commenters expressed that the focus of TRI is to increase the level of publicly available information to help communities plan for response actions in the event of a release. Commenters also expressed that NGP facilities ''do not pose the same level of risk as other facilities that Congress and EPA have deemed significant enough to include in the TRI'' (0478) as well as that hazardous air pollutants (HAPs) are already covered under the National Emission Standards for Hazardous Air Pollutants (NESHAP), which minimize risk of accidental releases. One commenter further expressed concern that NGP facility release data reported to TRI could be misunderstood or mischaracterized by the public, in that most NGP facility releases are authorized by permits (*e.g.,* Clean Air Act permitting) and thus are planned and controlled.

2. EPA Response

EPA disagrees that the data reporting that the rule would require is not relevant to the purposes of TRI. TRI's central focus is to provide information to federal, state, and local governments and the public, including citizens of communities surrounding covered facilities; to inform persons about releases of toxic chemicals to the environment; to assist governmental agencies, researchers, and other persons in the conduct of research and data gathering; to aid in the development of appropriate regulations, guidelines, and standards; and for other similar purposes. Further, though planning for an emergency response action is not a primary focus of TRI, information collected under TRI do help inform decision-making related to potential risk concerns. Moreover, the addition of NGP facilities would meaningfully increase the information available to the public on releases and other waste management of listed chemicals from the NGP sector and further the purposes of EPCRA section 313. Further, TRI is a nationwide database that places data in a central, publicly accessible location, and TRI data are uniform and commensurable, better enabling meaningful comparisons, analyses, and trend determinations.

The Agency is aware that the public may misunderstand or misrepresent TRI data. Misuse or misinterpretation of information does not mean that the basis for collecting the information is invalid. EPA finds that the appropriate solution to this issue for TRI is education and outreach, rather than a decision not to include an otherwise eligible industry group on TRI. However, any potential for misconstruing TRI data is not unique to NGP facilities or the data they would submit. Further, EPA finds the activities and processes NGP facilities conduct are analogous to those of the Petroleum Refineries sector (NAICS 324110), which is a covered sector under TRI. Thus, including NGP facilities would provide information to TRI similar to what facilities in the petroleum refineries sector already provide. EPA provides a ''Factors to Consider When Using Toxics Release Inventory Data'' document to help stakeholders understand how to use TRI appropriately (accessible at *https://www.epa.gov/sites/production/files/2019-03/documents/factors_to_consider_march_2019.pdf*). EPA is amenable to recommendations on how to further improve stakeholders' ability to make use of TRI data.

H. NGP Facilities are Currently Regulated by Law (Federal and State)

1. Comment

Some commenters referred to existing federal and state regulations, among them EPA's National Emissions Inventory (NEI) program, which already impose compliance obligations on NGP

facilities, as sufficient and a reason for EPA to withdraw the proposed rule.

2. EPA Response

The Agency disagrees. Although EPA's NEI program also collects and publishes air emissions data pertaining to NGP facilities, TRI reporting by these facilities would offer key benefits the NEI does not provide. First, the NEI is limited to air emissions, whereas TRI requires disclosure of releases to air, land, and water, as well as waste management and pollution prevention information. Second, the NEI is published on a triennial basis, whereas TRI data are collected and published annually. Third, the different purposes of the two programs drive different uses of the data they collect. TRI was developed to provide the public with information about the disposition of toxic chemicals in their communities, whereas the NEI was developed to collect data to support air modeling and risk assessments at the national level.

Further, any generation or collection of overlapping data by TRI is not unique to NGP facilities. As stated in its information collection request (ICR) (Ref. 8), EPA anticipates some overlap of TRI and other programs, and notes that section 313(g)(2) of EPCRA specifies that respondents may use readily available data collected pursuant to other provisions of law to complete the EPCRA section 313 reports.

Finally, information required by these other statutes may not provide readily accessible multi-media release and transfer, inventory, or pollution prevention data with the same scope, level of detail, chemical coverage, and frequency of collection as data currently included in TRI. As described in Unit III.G.2, given TRI's community-right-to-know foundations, TRI data are designed to be especially accessible and easy to use, and the systems that offer them to the public over the Web provide numerous analysis, download, and visualization tools. Thus, the rule provides benefits that other regulations and programs do not.

I. NGP Reporting Imposes Significant Burdens on the Regulated Community and EPA Underestimates These Burdens

1. Comment

Some commenters stated that EPA's proposed rule underestimates the costs of compliance, the burden and related cost of reporting for NGP facilities, and associated cost of collecting economic data. Commenters also suggested that EPA does not take into account the full operational activities of NGP facilities and that the burden analysis that EPA conducted only considers cost to prepare and submit forms; the analysis does not account for costs associated with tracking and analysis of chemicals activity that do not reach reporting thresholds but nonetheless must be tracked as part of determining TRI reporting applicability. One commenter pointed to the 44 pages of guidance that EPA has published on the subject of threshold calculations alone as evidence of ambiguity and resultant baseline burden imposed on facilities to merely determine their reporting obligation. Another commenter suggested EPA reduce the scope of the final rule to focus only on the approximately 21 chemicals used by NGP facilities and not require reporting from NGP facilities on other TRI chemicals.

2. EPA Response

As detailed in Unit III.F.2 of this notice, according to a triennial survey of NGP facilities by the EIA (EIA–757 survey), described further in the economic analysis EPA prepared for this rulemaking (Ref. 4), there were 517 NGP facilities in the lower 48 states as of 2012. Since the proposed rule, an updated EIA survey estimated there were 478 such facilities as of 2017 (Ref. 5). EPA estimates that more than half of these facilities would annually meet TRI reporting thresholds for one or more of 21 different TRI-listed chemicals and, if covered by the reporting requirements of TRI, would be required to submit TRI information to EPA. The information likely to be obtained from these facilities is not readily available elsewhere.

EPA disagrees that it has underestimated burden by failing to account for activities ancillary to Form R or A submittal, such as rule familiarization (*i.e.,* staff at a facility that is reporting under EPCRA section 313 for the first time must read the reporting package and become familiar with the reporting requirements, which includes the time needed to review instructions, and the time needed to train personnel to respond to a collection of information), reporter compliance determination, or non-reporter compliance determination (*i.e.,* those eligible facilities that will complete compliance determination but will not file a Form R or Form A). As described in the economic analysis of the proposed addition (Ref. 30) and included in the docket for the proposed rule, the new methodology used to estimate reporting burden in the proposed rule—Ratio-Based Burden Methodology (RBBM)—is a restructured and simplified formulation of the previously employed methodology; OMB approved this new methodology, which was published on April 28, 2011 (Ref. 35). When estimating reporting burden using RBBM, the Nominal Form R unit burden is the base number and Form A unit burden is set at 61.5% of that value. These unit burdens reflect burden associated with form activities including rule familiarization, reporter compliance determination, calculations and form completion, and recordkeeping. In addition to Form R and Form A burden, total TRI Program burden is captured by adding non-form burden—associated with supplier notification, non-reporter compliance determination, and petitions—to form burden.

EPA disagrees with TPA's assertion that quantity of guidance on a subject is indicative of that subject's complexity and resulting burden that this rule would place on NGP facilities to assess their reporting obligations and prepare and submit reports. The 44 pages of guidance on threshold calculations to which TPA refers is a compendium of questions EPA has received over time from facilities across all TRI-covered industry sectors. It is not reasonable to suggest that a single NGP facility or all NGP facilities in aggregate would encounter a comparable quantity, or even a substantive portion, of those unique scenarios that all facilities in all covered industry sectors have identified in the TRI program's 35 years of existence where detailed guidance was provided. Further, EPA disagrees with TPA's suggestions that the Agency's offering of an ''advanced concepts'' training course and a threshold screening tool demonstrate the complexity of reporting. That some facilities have dealt with complexities does not lead to the conclusion that all facilities will face complexities. Indeed, TPA fails to identify any specific complexity that NGP facilities would face, whether shared by all covered facilities or specifically by NGP facilities due to this sector's unique activity characteristics.

Where reporting requirements for NGP facilities overlap with other state and federal laws, as several commenters have identified, the Agency finds that because facilities already collect data and have mechanisms in place to do so, any additional burden increment from reporting to TRI on such overlapping requirements will be minimal. Finally, EPA disagrees that NGP facilities otherwise subject to reporting should be restricted to only report on the 21 TRI-listed chemicals EPA has identified as associated with the NGP industry. As described at 42 U.S.C. 11023(a) and (b)(1)(A) and (B), EPA has authority to

require reporting from covered facilities on all TRI-listed chemicals. While EPA has identified 21 TRI-listed chemicals associated with the NGP industry, the burden of determining what other TRI-listed chemicals or chemical categories is not associated with a specific facility is minimal. Requiring NGP facilities to report to TRI on chemicals and chemical categories in addition to the 21 that EPA has associated with the NGP industry is consistent with furthering the purposes of EPCRA section 313.

J. Applicability of Executive Order 13771

1. Comment

Some commenters (0483, 0474, 0478) suggested that EPA consider E.O. 13771 (Reducing Regulation and Controlling Regulatory Costs), which they claim specifies that any new regulation should impose zero incremental costs and that EPA identify two existing regulations to be eliminated to offset any potential incremental costs of a new regulation. Commenters believe that, in contravention of E.O. 13771, the proposed rule creates undue burden with limited benefit and is incompatible with the objective of energy independence and economic growth. API also stated that in EPA's response to the EIP petition on October 22, 2015, the Agency wrote that NGP facilities are already subject to a wide range of multi-media requirements, suggesting that the existence of these requirements bolsters its position that this action is in contravention of E.O. 13771.

2. EPA Response

Executive Order 13771 of January 30, 2017 was revoked on January 20, 2021. Thus, EPA finds that comments referencing E.O. 13771 are moot. EPA has delineated its response to concerns of undue and unwarranted burden in Unit III.C.4. of this notice.

Confusion for Facilities in Determining TRI Applicability

K. Definition of ''Facility'' Is Flawed and Confusing for Industry

1. Comment

Some commenters believed that the statutory definition of ''facility,'' as applied to NGP facilities in the context of this rule, is flawed and creates confusion among industry and significant burden in understanding TRI reporting requirements. One commenter stated that the unique definitions of facility under other (non-TRI) statutes and programs used by EPA in its TRI estimations inflated the actual number of NGP facilities that may need to report if the rule were finalized and NGP were added as a covered industry sector under TRI. One commenter stated that the definition of facility results in coverage of small and insignificant sources of emissions and contends that the occasional inclusion of remote non-NGP operations in reporting to TRI is an unintended consequence that goes beyond Congressional intent. Commenters further cite previously identified issues with how to apply the definition of ''facility'' to the entire Oil and Gas Industrial Sector as mentioned in the 1996 proposed rule (finalized in 1997), when EPA deferred adding the oil and gas extraction industry group ''because of questions regarding how particular facilities should be identified,'' (61 FR 33588) (FRL–5379–3), and assert that these questions apply to the proposed NGP rule as well. On the other hand, some commenters felt that EPA should interpret the facility definition more ''broadly'' to capture a collectively large source of potential environmental contamination from the Oil and Gas Industrial Sector more broadly.

2. EPA Response

EPCRA section 329(4) defines the term ''*facility*'' to mean ''all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same *person* (or by any *person* which controls, is controlled by, or under common control with, such *person*) . . . .'' 42 U.S.C. 11049(4). See also, 40 CFR 372.3, which reflects the statutory definition and provides that a facility may contain more than one establishment, which the term establishment being defined as an economic unit, generally at a single physical location, where business is conducted or where services or industrial operations are performed. EPA disagrees that its application of the statutory definition of ''facility'' to the NGP facilities that are the subject of this rule is flawed. This rule does not add the entire Oil and Gas Industrial Sector to the TRI, and thus the ''questions regarding how particular facilities should be identified'' (61 FR 33588) (FRL–5379–3) at play in the 1996 proposed and 1997 final rule are not at play here. As EPA explained at pages 5–6 of its response to the EIP Petition, available at *https://www.regulations.gov/document/EPA-HQ-TRI-2013-0281-0047,* ''[u]nlike the remainder of this industrial sector . . ., natural gas processing plants readily meet the statutory definition of 'facility' at EPCRA section 329(4), 42 U.S.C. 11049(4).''

EPA also disagrees with the recommendation to apply the facility definition more ''broadly'' as part of this addition, such that geographically discrete oil and gas operations under common ownership should constitute a single facility under EPCRA. This comment to apply the ''facility'' definition more ''broadly,'' like the EIP petition, references *Sierra Club, Inc.* v. *Tyson Foods, Inc.,* 299 F. Supp. 2d 693 (W.D. Ky. 2003), where discrete chicken houses spaced 50 to 60 feet apart, under common ownership, were considered a single facility under EPCRA. As detailed in its petition response, EPA finds the average physical distances separating oil and gas operations far exceed those at issue in *Sierra Club, Inc.* v. *Tyson Foods, Inc.* However, there will be situations where distances between sites will warrant such sites being considered one facility for TRI-reporting purposes. As an example, in scenarios where sites that would otherwise be contiguous or adjacent are separated by a right of way, such sites are considered one facility for Section 313 reporting purposes. Further, as indicated in the proposed rule, contiguous or adjacent sites with a common owner or operator can result in such sites being included in the reporting required by an NGP facility, though these contiguous or adjacent sites would otherwise not trigger reporting had they been geographically distant from the TRI-covered NGP facility. In light of the statutory definition of ''facility,'' which specifically provides that such adjacent or contiguous facilities under common ownership are a single facility, the Agency disagrees that inclusion of such facilities in reporting to TRI is contrary to Congressional intent.

Although it is true that RMP and GHGRP have unique definitions of ''facility,'' which differ from EPCRA and may cause EPA's estimates of NGP facilities to be higher or lower than those that would ultimately report to TRI, EPA finds that data from these programs are appropriate for modeling the universe of NGP facilities in the U.S. that would report to TRI as a range—the lower bound estimate of which is 321 facilities—as well as estimating burden and determining if the addition would increase information made available pursuant to EPCRA section 313.

L. Confusion for Facilities in Determining TRI Applicability

1. Comment

One commenter recommended that EPA clarify issues related to how

facilities determine their NAICS classification by referencing the 2012 NAICS in the proposal, as significant changes were made to six of the NAICS sectors in 2017.

2. EPA Response

TRI requires facilities to determine their own NAICS code(s), based on their on-site activities and by conducting NAICS keyword and 2- to 6-digit searches on the U.S. Census Bureau website. Further, facilities may include multiple establishments that may have different NAICS codes as distinct and separate economic units. For TRI reporting, these facilities determine which economic activity contributes the majority or plurality of the facility's revenue. If the total value added of the products produced, shipped, or services provided at establishments with covered NAICS codes is greater than 50 percent of the value added of the entire facility's products and services, the entire facility meets the NAICS code criterion. If an establishment with a covered NAICS code has a value added of services or products shipped or produced that is greater than any other establishment within the facility (40 CFR 372.22(b)(3)), the facility also meets the NAICS code criterion. A final rule was published in the **Federal Register** on December 26, 2017 (82 FR 60906) (FRL–9970–02) to adopt 2017 NAICS codes for reporting year (RY) 2017 and subsequent reporting years. Accordingly, this final rule adds the portion of the industry sector categorized under NAICS 211130 to the scope of TRI requirements. Qualifiers for NAICS codes are common in TRI reporting requirements.

M. Naturally Occurring Argument

1. Comment

One commenter claimed that prior case law (the comment cited Barrick Goldstrike Mines, Inc. v. Whitman, 26 F. Supp. 2d 28, 41 (D.D.C. 2003), and Nat'l Min. Ass'n v. Browner, 2001 WL 1886840, No. CIV. A. 97 N 2665, at *6 (D. Colo. 2001)) ''established (1) that under EPCRA section 313, the term 'manufacture' of TRI chemicals is limited to the creation of the TRI chemical or compound as a result of human or industrial activities, and naturally occurring TRI chemicals and compounds originally present in a raw material feedstock will not be considered as 'manufactured' within the meaning of EPCRA section 313 and (2) the corollary that activities involving unaltered naturally occurring chemicals and compounds cannot be considered as 'processing' within the meaning of EPCRA section 313 as the activity of 'processing' requires the predicate of the EPCRA section 313 'manufacture' of the TRI chemical.'' (0482) This commenter contends that activities involving naturally occurring chemicals and compounds cannot be considered for manufacturing and processing thresholds. Based on this contention, the commenter asserts that EPA has overestimated the number of chemicals and facilities expected to trigger thresholds and thus provided a flawed rationale for the rule.

2. EPA Response

EPA disagrees with the commenters' interpretation of cited case law. The courts did not determine that manufacture is limited to the creation of the TRI chemical; the courts instead held that preparation of a listed chemical can only be considered ''processing,'' per the EPCRA definition, where the chemical has already been ''manufactured'' by some other activity. Further, it was noted that manufacture includes activities such as preparation. When natural gas is extracted from the Earth, it may contain chemical components other than methane. During and after extraction, the natural gas and its components undergo various separation and preparation activities. When it reaches an NGP facility, the natural gas is no longer the naturally-occurring, raw material it was at the time of extraction; it has already undergone preparation activities prior to and upon arriving at the NGP facility. The NGP facility then continues preparing and processing the natural gas—separating certain impurities and other components, among other activities—and distributes into commerce the methane gas and certain other products. EPA finds these activities constitute ''processing'' within the meaning of EPCRA section 313(b)(1)(C)(ii) and 40 CFR 372.3, and align with longstanding interpretations of the processing threshold activity, such as facilities that primarily recover sulfur from natural gas (originally added by Congress when enacting the statute), and the Petroleum Refineries sector, which are already covered under TRI.

IV. Summary of Final Rule

A. Scope of Addition

In this action, EPA is adding NGP facilities to the list of facilities subject to EPCRA section 313 reporting requirements.

The proposed rule contained information on EPA's review of the natural gas liquid extraction sector and these specific NGP facilities (Ref. 2). NGP facilities are stationary surface facilities that receive gas from a gathering system that collects raw natural gas from many nearby wells and prepares the gas for delivery to the NGP facilities. These NGP facilities further process the natural gas (composed primarily of methane) to industrial or pipeline specifications and extract heavier liquid hydrocarbons from the prepared field natural gas. During this process, natural gas liquids (NGLs) (*i.e.,* hydrocarbons heavier than methane) and contaminants (*e.g.,* hydrogen sulfide, carbon dioxide, and nitrogen) are separated from the natural gas stream, resulting in processed, pipeline-quality natural gas. NGLs are fractionated on-site into isolated streams (*e.g.,* ethane, propane, butanes, natural gasoline) or shipped off-site for subsequent fractionation or other processing. Hydrogen sulfide is often either disposed through underground injection or reacted into sulfuric acid or elemental sulfur, while carbon dioxide and nitrogen may be emitted to the atmosphere. The processed pipeline-quality natural gas is then transferred to consumers via intra- and inter-state pipeline networks. NGLs are primarily used as feedstocks by petrochemical manufacturers or refineries. SIC 1321 (Natural Gas Liquids) and NAICS 211130 (Natural Gas Liquid Extraction) comprise establishments that recover liquid hydrocarbons from oil and gas field gases (see discussion in Unit I.A. of this notice). NAICS 211130 includes facilities that recover sulfur from natural gas—such facilities already report TRI data to EPA because they are in SIC 2819 (Industrial Inorganic Chemicals, Not Otherwise Classified), which is a manufacturing sector covered by TRI. Current regulations only require NAICS 211130 facilities that recover sulfur from natural gas to report TRI data (*i.e.,* facilities in SIC 2819). Specifically, 40 CFR 372.23(b), which covers NAICS codes that correspond to SIC codes 20 through 39, lists NAICS 211130 but states: ''Limited to facilities that recover sulfur from natural gas and previously classified under SIC 2819, Industrial Inorganic chemicals, Not Elsewhere Classified.'' By adding SIC 1321 to the scope of industry sectors covered by TRI and including SIC 1321 into the qualifier for the NAICS 211130 listing, EPA is expanding TRI coverage to include all NGP facilities that meet TRI-reporting thresholds.

This rule does not add to TRI coverage of natural gas field facilities that only recover condensate from a stream of natural gas, lease separation facilities that separate condensate from natural gas, or natural gas pipeline

compressor stations that supply energy to move gas through transmission or distribution lines into storage. Additional examples of operations that this rule does not add to TRI coverage include Joule-Thompson valves, dew point depression valves, and isolated or standalone Joule-Thompson skids. The industrial operations described in this paragraph often occur at or close to extraction sites and are typically classified under NAICS codes other than 211130 (*e.g.,* NAICS 221210 (Distribution of Natural Gas)), and thus are not within the scope of the NAICS code addition. However, the term ''facility'' is defined by EPCRA section 329(4) as all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled by, or under common control with, such person) 42 U.S.C. 11049(4). Accordingly, operations described in this paragraph could be part of a single ''facility'' with TRI reporting and recordkeeping requirements if they are contiguous or adjacent to ''buildings, equipment, structures, and other stationary items'' with a common owner or operator that are in a covered TRI industrial sector.

B. Why do some natural gas processing facilities already submit TRI reporting forms to EPA?

Some NGP facilities are already subject to TRI reporting requirements because NGP facilities that recover sulfur from natural gas are part of a manufacturing sector that was originally subjected to reporting to TRI by Congress. Specifically, the scope of TRI sectors subject to reporting includes SIC code 2819 (Industrial Inorganic Chemicals, Not Elsewhere Classified), which was one of the manufacturing sectors in SIC 20–39 originally required to report to TRI by Congress. SIC code 2819 crosswalks to several manufacturing sector NAICS codes, including 211130 (Natural Gas Extraction), but only to the extent that it includes facilities that engage in sulfur recovery from natural gas.

Thus, when EPA began to use NAICS codes for TRI reporting purposes, the Agency listed NAICS 211112 (for 2002, 2007 and 2012 NAICS) with a qualifier to limit TRI coverage of the sector to facilities that fit SIC code 2819. The 2017 NAICS for Natural Gas Extraction was updated to NAICS 211130. See 40 CFR 372.23(b) (211130—Natural Gas Extraction): ''Limited to facilities that recover sulfur from natural gas (previously classified under SIC 2819, Industrial Inorganic chemicals, NEC (recovering sulfur from natural gas)).''

C. What are the environmental justice impacts of the final rule?

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes the federal executive policy on environmental justice (EJ). Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make EJ part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the U.S. Executive Order 14008 (86 FR 19, February 1, 2021) reiterated a commitment to securing EJ and, among other provisions, directed agencies to make achieving EJ a part of their missions by developing programs, policies, and activities to address the cumulative impacts of environmental, health, and climate-related issues in disadvantaged communities.

This regulatory action changes reporting requirements for NGP facilities and does not have any direct impact on human health or the environment. However, for communities living near NGP facilities, there is the potential for new information about toxic chemical releases and waste management practices occurring in those communities to become available through the TRI reporting data.

To better understand how many people live near these facilities and the demographics of those communities, EPA used the EJSCREEN environmental justice screening and mapping tool (Ref. 10) to aggregate information about their populations and demographics. EJSCREEN uses information about the population living in each Census block group contained within a user-defined radius to estimate the total population and related demographic indicator information. In past screening experience, EPA has found it helpful to establish a suggested starting point for the purpose of identifying geographic areas that may warrant further EJ consideration, analysis, or outreach. For early applications of EJSCREEN, EPA identified the 80th percentile filter as that initial starting point. See Technical Information about EJSCREEN at *https://www.epa.gov/ejscreen/technical-information-about-ejscreen* for more information (Ref. 11).

Latitude and longitude information was available for all but seven facilities included in the upper bound estimate of the universe of affected NGP facilities, enabling EPA to make use of EJSREEN for 482 of the affected NGP facilities. Using EJSREEN, EPA summarized population demographics using a one- and three-mile radius around each facility to identify and understand EJ impacts in communities and help identify a community's potential vulnerability to environmental and health concerns.

In total, there are approximately 1.4 million people living within three miles of at least one of the 482 NGP facilities identified. Demographic information about the number of these facilities exceeding the 80th national percentile value is included below. Some NGP facilities are located in communities where there are potential EJ considerations. For example, 41 NGP facilities are located in a three-mile radius of communities where the low-income indicator exceeds the 80th percentile. Note that potential EJ impacts in communities can be different when considered at distances other than the one- or three-mile radii considered in the analysis provided below.

TABLE 1—DEMOGRAPHIC INFORMATION BASED ON ONE AND THREE-MILE RADII AROUND NGP FACILITIES USING EJSCREEN DATA

Demographic indicator	Description	Facilities exceeding 80th percentile			
		One-mile radius		Three-mile radius	
		Number	Percent (out of 482)	Number	Percent (out of 482)
Low Income	The percent of individuals in households where the household income is less than or equal to twice the federal "poverty level".	42	8.7	41	8.5

TABLE 1—DEMOGRAPHIC INFORMATION BASED ON ONE AND THREE-MILE RADII AROUND NGP FACILITIES USING EJSCREEN DATA—Continued

Demographic indicator	Description	Facilities exceeding 80th percentile			
		One-mile radius		Three-mile radius	
		Number	Percent (out of 482)	Number	Percent (out of 482)
People of Color	The percent of individuals who list their racial status as a race other than white alone and/or list their ethnicity as Hispanic or Latino.	20	4.1	31	6.4
Less than High School Education.	The percent of people age 25 or older whose education is short of a high school diploma.	87	18.0	134	27.8
Linguistic Isolation	The percent of people living in a household in which all members age 14 years and over speak a non-English language and also speak English less than "very well" (have difficulty with English).	34	7.1	67	14.0
Demographic Index	Average of the Low Income and People of Color indicators.	23	4.8	32	6.6

It is important to note that one of the TRI program's primary goals is to engage in outreach to promote sustainability, inform community-based environmental decision-making, and work toward environmental justice with the goal of achieving environmental protections for all communities. To meet this goal, the TRI program: Builds awareness of TRI resources through focused communications; Promotes discussion and collaboration among data users through webinars and conferences; Assists individual users and communities with analyses and interpretation; Engages with community and academic stakeholders to enhance understanding and use of data; and Develops tailored resources for supporting environmental justice and tribal research.

V. References

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

1. Environmental Integrity Project, Chesapeake Climate Action Network, CitizenShale, Clean Air Council, Clean Water Action, Delaware Riverkeeper Network, Earthworks, Elected Officials to Protect New York, Environmental Advocates of New York, Lower Susquehanna Riverkeeper, Natural Resources Defense Council, OMB Watch, PennEnvironment, Powder River Basin Resource Council, San Juan Citizens Council, Sierra Club, Texas Campaign for the Environment. Petition to Add the Oil and Gas Extraction Industry, Standard Industrial Code 13, to the List of Facilities Required to Report under the Toxics Release Inventory. October 24, 2012.
2. EPA. Proposed Rule; Addition of Natural Gas Processing Facilities to the Toxics Release Inventory (TRI). **Federal Register**. *82 FR 1651,* January 6, 2017 (FRL–9953–68).
3. USEPA. Formal Response to October 24, 2012, Petition to Add the Oil and Gas Extraction Industry, Standard Industrial Classification Code 13, to the List of Facilities Required to Report under Section 313 of the Emergency Planning and Community Right-to-Know Act. October 22, 2015.
4. USEPA, OPPT. Economic Analysis of the Proposed Addition of Natural Gas Processing Facilities to the Toxics Release Inventory. August 11, 2016.
5. USEPA, OPPT. Addendum to the Economic Analysis of the Proposed Addition of Natural Gas Processing Facilities to the Toxics Release Inventory; Applicable to the Final Rule. November 2021.
6. US Energy Information Administration (EIA). 757 Natural Gas Processing Plant Survey. 2017. *https://www.eia.gov/survey/#eia-757.*
7. USEPA. Final Rule; Addition of Facilities in Certain Industry Sectors; Revised Interpretation of Otherwise Use; Toxic Release Inventory Reporting; Community Right-to-Know. **Federal Register**. *62 FR 23834.* May 1, 1997. (FRL–5578–3).
8. USEPA, OPPT. Supporting Statement for an Information Collection Request (ICR) Under the Paperwork Reduction Act (PRA). Final Rule ICR; Addition of Natural Gas Processing Facilities to the Toxics Release Inventory (TRI). EPA ICR No. 2560.01; OMB Control No. 2070–[NEW]. November 2016.
9. USEPA, OPPT. TRI Regulatory Development Branch: Revising TRI Burden to Ratio-Based Methodology. *https://www.epa.gov/sites/default/files/documents/136321RatioBasedMethodology.pdf.*
10. USEPA. EPA's Environmental Justice Screening and Mapping Tool (Version 2020). *https://ejscreen.epa.gov/mapper.*
11. USEPA. EJSCREEN Environmental Justice Mapping and Screening Tool; EJSCREEN Technical Documentation. September 2019.

VI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *http://www2.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act (PRA)

The information collection activities in this rule have been submitted for approval to OMB under the PRA, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document that EPA prepared is assigned EPA ICR No. 2560.01 and OMB Control No.: 2070–[NEW] (Ref.8). You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here. The information collection requirements are not enforceable until OMB approves them.

Currently, the facilities subject to the reporting requirements under EPCRA section 313 and PPA section 6607 may use either EPA Toxic Chemicals Release Inventory Form R (EPA Form 1B9350–

1), or EPA Toxic Chemicals Release Inventory Form A (EPA Form 1B9350–2). The Form R must be completed if a facility manufactures, processes, or otherwise uses any listed chemical above threshold quantities and meets certain other criteria. For the Form A, EPA established an alternative threshold for facilities with low annual reportable amounts of a listed toxic chemical. A facility that meets the appropriate reporting thresholds, but estimates that the total annual reportable amount of the chemical does not exceed 500 pounds per year, can take advantage of an alternative manufacture, process, or otherwise use threshold of 1 million pounds per year of the chemical, provided that certain conditions are met, and submit the Form A instead of the Form R. In addition, respondents may designate the specific chemical identity of a substance as a trade secret pursuant to EPCRA section 322 (42 U.S.C. 11042) and 40 CFR part 350. OMB has approved the reporting and recordkeeping requirements related to Forms A and R, supplier notification, and petitions under OMB Control number 2070–0212 (EPA Information Collection Request (ICR) No. 2613.05) and those related to trade secret designations under OMB Control 2050–0078 (EPA ICR No. 1428.11). As such, this ICR is intended to amend the existing ICR to include the following additional details:

Respondents/affected entities: NGP facilities.

Respondent's obligation to respond: Mandatory (EPCRA section 313).

Estimated number of respondents: 321 to 489.

Frequency of response: Annual.

Total estimated burden: 181,000 to 276,000 burden hours in the first year and approximately 86,000 to 131,000 burden hours in the steady state. Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: approximately $11,846,000 to $18,044,000 in the first year and approximately $5,641,000 to $8,593,000 in the steady state.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9. When OMB approves this ICR, the Agency will announce that approval in the **Federal Register** and publish a technical amendment to 40 CFR part 9 to display the OMB control number for the approved information collection activities contained in this final rule.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA, 5 U.S.C. 601 *et seq.* The small entities subject to the requirements of this action are NGP facilities. The Agency determined in its original economic analysis that the 282–444 facilities estimated to be impacted by this action are linked to 76–90 parent entities, of which 32–41 qualify as small businesses as defined by the RFA, all of which are estimated to incur an annualized cost impact of less than 1%. Details of this analysis are presented in the EPA economic analysis (Ref. 4). As the fundamentals of that analysis apply here as well, the final rule is not expected to significantly impact a substantial number of small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

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

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

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

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

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

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

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution or use of energy and has not otherwise been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards. As such, NTTAA section 12(d), 15 U.S.C. 272 note, does not apply to this action.

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

In accordance with Executive Order 12898 (59 FR 7629, February 16, 1994) and Executive Order 14008 (86 FR 7619, January 27, 2021), EPA finds that this action will not result in disproportionately high and adverse human health, environmental, climate-related, or other cumulative impacts on disadvantaged communities. As discussed in more detail in Unit IV.C., EPA used the EJSCREEN environmental justice screening and mapping tool to better understand how many people live near these facilities and the demographics of those communities. The information collected through TRI reporting will serve to inform communities living near NGP facilities, and there is the potential for new information about toxic chemical releases and waste management practices occurring in those communities to become available through the TRI reporting data.

K. Congressional Review Act (CRA)

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

List of Subjects in 40 CFR Part 372

Environmental protection, community right-to-know, reporting and recordkeeping requirements, and toxic chemicals.

Dated: November 18, 2021.

Michal Freedhoff,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

Therefore, for the reasons stated in the preamble, EPA is amending 40 CFR part 372 as follows:

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

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

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

■ 2. Amend § 372.23 by:

■ a. Adding numerically an entry for ''1321'' to the table in paragraph (a);

■ b. Adding numerically an entry for ''211130—Natural Gas Extraction'' to the table in paragraph (c).

The additions read as follows:

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

(a) * * *

Major group or industry code	Exceptions and/or limitations
* * * * * * *	
1321.	
* * * * * * *	

* * * * * (c) * * *

Subsector code or industry code	Exceptions and/or limitations
211130—Natural Gas Extraction	Limited to facilities classified under SIC 1321, Natural Gas Liquids.
* * * * * * *	

[FR Doc. 2021–25646 Filed 11–23–21; 8:45 am]

BILLING CODE 6560–50–P

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

National Endowment for the Humanities

45 CFR Part 1177

RIN 3136–AA38

Claims Collection

AGENCY: National Endowment for the Humanities; National Foundation on the Arts and the Humanities.

ACTION: Direct final rule.

SUMMARY: The National Endowment for the Humanities (NEH) is revising its Claims Collection regulation in accordance with the Debt Collection Improvement Act of 1996 (DCIA), as implemented by the Department of Justice (DOJ) and the Department of Treasury (Treasury) in the revised Federal Claims Collection Standards (FCCS). This final rule revises NEH's rules and procedures for administrative collection, offset, compromise, suspension, and termination of collection activity for civil claims for money, funds, or property. Additionally, this final rule revises the rules and procedures that NEH follows to refer civil claims to Treasury, Treasury-designated debt collection centers, or DOJ so that Treasury or DOJ may collect the civil claim through further administrative action or litigation, as applicable.

DATES: This rule is effective February 22, 2022 without further action, unless adverse comment is received by December 27, 2021. If adverse comment is received, NEH will publish a timely withdrawal of the rule in the **Federal Register**.

ADDRESSES: You may send comments by email to *gencounsel@neh.gov.*

Instructions: Include ''Claims Collection'' and RIN 3136–AA38 in the subject line of the email.

FOR FURTHER INFORMATION CONTACT: Elizabeth Voyatzis, Deputy General Counsel, Office of the General Counsel, National Endowment for the Humanities, 400 7th Street SW, Room 4060, Washington, DC 20506; (202) 606–8322; *gencounsel@neh.gov.*

SUPPLEMENTARY INFORMATION:

1. Background

The original FCCS provided guidance for implementing the Debt Collection Act of 1982, Public Law 97–365 on a government-wide basis. NEH implemented the FCCS in 1986 in its Claims Collection regulation, set forth at 45 CFR 1177 *et seq.* As mandated by the DCIA, in 2000, DOJ and Treasury jointly promulgated the revised FCCS, set forth at 31 CFR 900–904, to reflect the DCIA's legislative changes to federal debt collection procedures. The revised FCCS superseded the original FCCS. As a result, NEH is revising its Claims Collection regulation to conform with the DCIA and the current FCCS.

2. Basic Provisions

In accordance with the requirements of the DCIA and the revised FCCS, this rule revises NEH's rules and procedures for the administrative collection, offset, compromise, suspension, and termination of collection activity for civil claims for money, funds, or property, as defined by 31 U.S.C. 3701(b). Additionally, this rule revises the rules and procedures that NEH will use to refer applicable civil claims to Treasury, Treasury-designated debt collection centers, or DOJ for collection by further administrative action or litigation. This rule affects NEH's debtors, but it does not apply to claims between federal agencies.

This rule incorporates the following changes to NEH's current Claims Collection regulation (45 CFR 1177, *et seq.*):

A. Demand Letter

One demand letter should be sufficient. The demand letter will include: (1) The applicable standards NEH follows for imposing any interest, penalties, or administrative costs; (2) NEH's policies regarding its use of collection agencies, federal salary offset, tax refund offset, administrative offset, and litigation; (3) any rights the debtor may have to seek review of NEH's determination of the debt and to enter into a reasonable repayment agreement; and (4) information regarding NEH's remedies to enforce payment of the debt.

B. Mutual Releases

In all appropriate instances, NEH and debtors will exchange mutual releases of non-tax liabilities when compromising a claim.

C. Increase in Amount

The principal claim amount for which NEH is authorized to compromise, suspend, or terminate collection activity—without concurrence by DOJ—will increase from $20,000 to $100,000. Additionally, the minimum claim amount that NEH may refer to DOJ for litigation will increase from $600 to $2,500.

D. Transferring or Referring Delinquent Debt

There are new procedures for transferring or referring delinquent debt to Treasury or a Treasury-designated debt collection center for debt collection.

E. Centralized Administrative Offset

There are new debt collection procedures for disbursing officials to follow when conducting mandatory centralized administrative offset.

F. Mandatory Credit Bureau Reporting

There are new debt collection procedures for mandatory credit bureau reporting.

G. Prohibition Against Federal Financial Assistance

There are new debt collection procedures prohibiting federal financial assistance, which includes grants, cooperative agreements, contracts, loans, loan guarantees, and loan insurance to debtors, unless waived by NEH's Chairperson (the ''Chairperson'') or the Chairperson's designee.

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

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget for review.

Executive Order 13771, Reducing Regulations and Controlling Regulatory Costs

This action is not expected to be an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

Executive Order 13132, Federalism

This rulemaking 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.

Executive Order 12988, Civil Justice Reform

This rulemaking meets the applicable standards set forth in section 3(a) and 3(b)(2) of Executive Order 12988. Specifically, this rulemaking is written in clear language designed to help reduce litigation.

Executive Order 13175, Indian Tribal Governments

Under the criteria in Executive Order 13175, NEH evaluated this rulemaking and determined that it will not have any potential effects on Federally recognized Indian Tribes.

Executive Order 12630, Takings

Under the criteria in Executive Order 12630, this rulemaking does not have significant takings implications. Therefore, a takings implication assessment is not required.

Administrative Procedure Act of 1946

NEH finds good cause to issue this regulation as a direct final rule, without prior notice and comment, because the agency views it as a noncontroversial amendment and anticipates no significant adverse comment. This rulemaking merely conforms NEH's claims collection regulation to the standards of agency practice and procedure previously jointly promulgated by DOJ and Treasury according to the DCIA. Therefore, under 5 U.S.C. 553(b)(3)(A), this rule is not subject to the Administrative Procedure Act's requirements for a notice of proposed rulemaking.

Regulatory Flexibility Act of 1980

This rulemaking will not have a significant adverse impact on a substantial number of small entities, including small businesses, small governmental jurisdictions, or certain small not-for-profit organizations.

Paperwork Reduction Act of 1995

This rulemaking does not impose an information collection burden under the Paperwork Reduction Act. This action contains no provisions constituting a collection of information pursuant to the Paperwork Reduction Act.

Unfunded Mandates Act of 1995

This rulemaking does not contain a Federal mandate that will 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 one year.

National Environmental Policy Act of 1969

This rulemaking will not have a significant effect on the human environment.

Small Business Regulatory Enforcement Fairness Act of 1996

This rulemaking will not be a major rule as defined in section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rulemaking will not result in an annual effect on the economy of $100 million or more, a major increase in costs or prices, significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

E-Government Act of 2002

All information about NEH required to be published in the **Federal Register** may be accessed at *www.neh.gov.* The website *https://www.regulations.gov* contains electronic dockets for NEH's rulemakings under the Administrative Procedure Act of 1946.

Plain Writing Act of 2010

To ensure this rulemaking was written in plain and clear language so that it can be used and understood by the public, NEH modeled the language of this rulemaking on the Federal Plain Language Guidelines.

List of Subjects in 45 CFR 1177

Administrative practice and procedure, Claims, Debt, Government employees, Privacy.

■ For the reasons set forth in the preamble, the National Endowment for the Humanities revises 45 CFR part 1177 to read as follows:

PART 1177—CLAIMS COLLECTION

Subpart A—Scope of Standards

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1177.30 Termination of collection activity.
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1177.32 Discharge of indebtedness; reporting requirements.

Subpart E—Referrals to the Department of Justice

1177.33 Prompt referral.
1177.34 Claims Collection Litigation Report.
1177.35 Preservation of evidence.
1177.36 Minimum amount of referrals to the Department of Justice.

Authority: 31 U.S.C. 3711, 3716–3719; Pub. L. 104–134; 31 CFR 900–904.

Subpart A—Scope of Standards

§ 1177.1 Prescription of standards.

(a) The National Endowment for the Humanities (NEH) is issuing the regulation the regulations in this part pursuant to 31 CFR 900–904 and under the authority contained in 31 U.S.C. 3711(d)(2). The regulations in this part prescribe the standards that NEH will use in the administrative collection, offset, compromise, suspension, and termination of collection activity for civil claims for money, funds, or property, as defined by 31 U.S.C. 3701(b), unless specific Federal agency statues or regulations apply to such activities or, as provided for by Title 11 of the United States Code, when the claims involve bankruptcy. Federal agencies include agencies of the executive, legislative, and judicial branches of the Government, including Government corporations. The regulations in this part also prescribe standards for referring debts to the Department of Justice (DOJ) for litigation. Additional guidance is contained in the Office of Management and Budget's circular A–129 (Revised), ''Policies for Federal Credit Programs and Non-Tax Receivables,'' the Department of the Treasury's (Treasury) ''Managing Federal Receivables,'' and other publications concerning debt collection and debt management. These publications are available from the Debt Management Services, Financial Management Service, Department of the Treasury, 401 14th Street SW, Room 151, Washington, DC 20227.

(b) Additional rules governing centralized administrative offset and the transfer of delinquent debts to Treasury or Treasury-designated debt collection centers for collection (cross-servicing) under the Debt Collection Improvement Act of 1996, Public Law 104–134, 110 Stat. 1321, 1358 (April 26, 1996) (DCIA), are issued in separate regulations by Treasury. Rules governing the use of certain debt collection tools created under the DCIA, such as administrative wage garnishment, also are issued in separate regulations by Treasury. See generally 31 CFR 285.

(c) NEH is not limited to the remedies contained in this part and may use all authorized remedies, including alternative dispute resolution and arbitration, to collect civil claims, to the extent that such remedies are not inconsistent with the Federal Claims Collection Act, as amended, Public Law 89–508, 80 Stat. 308 (July 19, 1966), the Debt Collection Act of 1982, Public Law 97–365, 96 Stat. 1749 (October 25, 1982), the DCIA, or other relevant statutes. The regulations in this part are not intended to impair NEH's common law rights to collect debts.

(d) Standards and policies regarding the classification of debt for accounting purposes (for example, write off of uncollectible debt) are contained in the Office of Management and Budget's Circular A–129 (Revised), ''Policies for Federal Credit Programs and Non-Tax Receivables.''

§ 1177.2 Definitions and construction.

(a) For the purposes of the standards in this part, the terms ''claim'' and ''debt'' are synonymous and interchangeable. They refer to an amount of money, funds, or property that an agency official has determined to be due the United States from any person, organization, or entity, except another Federal agency. For the purposes of administrative offset under 31 U.S.C. 3716, the terms ''claim'' and ''debt'' include an amount of money, funds, or property owed by a person to a State (including past-due support being enforced by a State), the District of Columbia, American Samoa, Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, or the Commonwealth of Puerto Rico.

(b) ''Chairperson'' means the Chairperson of NEH or the Chairperson's designee.

(c) A debt is ''delinquent'' if it has not been paid by the date specified in the initial written demand for payment or applicable agreement or instrument (including a post-delinquency payment agreement), unless other satisfactory payment arrangements have been made.

(d) Words in the plural form shall include the singular and vice versa, and words signifying the masculine gender shall include the feminine and vice versa. The terms ''includes'' and ''including'' do not exclude matters not listed but do include matters that are in the same general class.

(e) ''Recoupment'' is a special method for adjusting debts arising under the same transaction or occurrence. For example, obligations arising under the same contract generally are subject to recoupment.

(f) Unless otherwise stated, ''Secretary'' means the Secretary of the Treasury or the Secretary's delegate.

§ 1177.3 Antitrust, fraud, and tax and interagency claims excluded.

(a) The standards in this part relating to compromise, suspension, and termination of collection activity do not apply to any debt based in whole or in part on conduct that violates the antitrust laws or to any debt involving fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any party having an interest in the claim. Only DOJ has the authority to compromise, suspend, or terminate collection activity on such claims. The standards in this part relating to the administrative collection of claims do apply, but only to the extent authorized by DOJ in a particular case. Upon identification of a claim based in whole or in part on conduct in violation of the antitrust laws or any claim involving fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any party having an interest in the claim, NEH shall promptly refer the case to DOJ for action. At its discretion, DOJ may return the claim to NEH for further handling, in accordance with the standards in this part.

(b) This part does not apply to tax debts.

(c) This part does not apply to claims between Federal agencies. NEH will attempt to resolve interagency claims by negotiation in accordance with

Executive Order 12146 (3 CFR, 1979 Comp., pp. 409–412).

§ 1177.4 Compromise, waiver, or disposition under other statutes not precluded.

Nothing in this part precludes NEH's disposition of any claim under statutes and implementing regulations other than 31 U.S.C. 37, subchapter II (Claims of the United States Government). See *e.g.,* the Federal Medical Care Recovery Act, Public Law 87–693, 76 Stat. 593 (September 25, 1962) (codified at 42 U.S.C. 2651 *et seq.*), and applicable regulations, 28 CFR 43. In such cases, the laws and regulations that are specifically applicable to NEH's claims collection activities generally take precedence over this part.

§ 1177.5 Form of payment.

Debtors may pay claims in the form of money or, when a contractual basis exists, the Government may demand the return of specific property or the performance of specific services.

§ 1177.6 Subdivision of claims not authorized.

NEH will not subdivide debts in order to avoid the monetary ceiling established by 31 U.S.C. 3711(a)(2). NEH will consider a debtor's liability arising from a particular transaction or contract as a single debt in determining whether the debt is one of less than $100,000 (excluding interest, penalties, and administrative costs) or such higher amount as the Attorney General shall from time to time prescribe for purposes of compromising, suspending, or terminating collection activity.

§ 1177.7 Required administrative proceedings.

NEH is not required to omit, foreclose, or duplicate administrative proceedings required by contract or other laws or regulations.

§ 1177.8 No private rights created.

The standards in this part do not create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its agencies, its officers, or any other person, nor shall NEH's failure to comply with any of the provisions of this part be available to any debtor as a defense.

Subpart B—Standards for the Administrative Collection of Claims

§ 1177.9 Aggressive NEH collection activity.

(a) NEH will aggressively collect all debts that arise out of its activities, or that are referred or transferred for collection services to NEH. NEH will promptly undertake collection activities and take follow-up action as necessary. Nothing in 31 CFR 900 through 904 requires DOJ, Treasury, or other Treasury-designated debt collection centers to duplicate collection activities previously undertaken by NEH or to perform collection activities that NEH should have undertaken.

(b) Debts that NEH refers or transfers to Treasury or Treasury-designated debt collection centers under the authority of 31 U.S.C. 3711(g) will be serviced, collected, or compromised, or the collection action will be suspended or terminated, in accordance with the statutory requirements and authorities applicable to the collection of such debts.

(c) NEH will cooperate with other agencies in debt collection activities.

(d) NEH will consider referring debts that are less than 180 days delinquent to Treasury or to Treasury-designated debt collection centers to accomplish efficient, cost effective debt collection. Treasury is a debt collection center, is authorized to designate other Federal agencies as debt collection centers based on their performance in collecting delinquent debts, and may withdraw such designations. Referrals to debt collection centers are at the discretion of, and for a time period acceptable to, the Secretary. Referrals may be for servicing, collection, compromise, suspension, or termination of collection action.

(e) NEH will transfer to the Secretary any debt that has been delinquent for a period of 180 days or more so that the Secretary may take appropriate action to collect the debt or terminate collection action. See 31 CFR 285.12 (Transfer of Debts to Treasury for Collection). This requirement does not apply to any debt that:

(1) Is in litigation or foreclosure;

(2) Will be disposed of under an approved asset sale program;

(3) Has been referred to a private collection contractor for a period of time acceptable to the Secretary;

(4) Is at a debt collection center for a period of time acceptable to the Secretary (see paragraph (d) of this section);

(5) Will be collected under internal offset procedures within three years after the debt first became delinquent; or

(6) Is exempt from this requirement based on a determination by the Secretary that exemption for a certain class of debt is in the best interests of the United States. NEH may request that the Secretary exempt specific classes of debts.

(e) Agencies operating Treasury-designated debt collection centers are authorized to charge a fee for services rendered regarding referred or transferred debts. NEH may pay the fee out of amounts it collects and may add the fee to the debt as an administrative cost (see § 1177.18).

§ 1177.10 Demand for payment.

(a) NEH will promptly make a written demand, as described in paragraph (b) of this section, upon a debtor of the United States in terms that inform the debtor of the consequences of failing to cooperate with NEH to resolve the debt. The specific content, timing, and number of demand letters will depend upon the type and amount of the debt and the debtor's response, if any, to NEH's letters or telephone calls. Generally, one demand letter should suffice. In determining the timing of the demand letter(s), NEH will give due regard to the need to refer debts promptly to DOJ for litigation, in accordance with § 1177.33 or otherwise. When necessary to protect the Government's interest (for example, to prevent a statute of limitations from running), NEH may precede written demand by other appropriate actions under this part, including immediate referral for litigation.

(b) Demand letters will inform the debtor of:

(1) The basis for the indebtedness and the rights, if any, the debtor may have to seek review within NEH;

(2) The applicable standards for imposing any interest, penalties, or administrative costs;

(3) The date by which the debtor should make payment in order to avoid late charges (*i.e.,* interest, penalties, and administrative costs) and enforced collection, which generally should not be more than thirty (30) days from the date that NEH mails or hand-delivers the demand letter; and

(4) The name, address, and phone number of a contact person or office within NEH.

(c) NEH will exercise care to ensure that demand letters are mailed or hand-delivered on the same day that they are dated. There is no prescribed format for demand letters. NEH will utilize demand letters and procedures that will lead to the earliest practicable determination of whether the agency can resolve the debt administratively or must refer it for litigation.

(d) NEH will include in demand letters such items as the agency's willingness to discuss alternative methods of payment; its policies with respect to the use of credit bureaus, debt collection centers, and collection agencies; its remedies to enforce payment of the debt (including

assessment of interest, administrative costs and penalties, administrative garnishment, the use of collection agencies, Federal salary offset, tax refund offset, administrative offset, and litigation); the requirement that any debt delinquent for more than 180 days be transferred to Treasury for collection; and, depending on applicable statutory authority, the debtor's entitlement to consideration of a waiver.

(e) NEH will respond promptly to communications from debtors, within thirty (30) days whenever feasible, and will advise debtors who dispute debts to furnish available evidence to support their contentions.

(f) Prior to initiating the demand process, or at any time during or after completing the demand process, if NEH determines to pursue, or is required to pursue, offset, it will follow the offset procedures in § 1177.11. The availability of funds or money for debt satisfaction by offset, and NEH's determination to pursue collection by offset, will release NEH from further compliance with paragraphs (a), (b), (c), and (d) of this section.

(g) Prior to referring a debt for litigation, NEH will advise each person it determines to be liable for the debt that, unless the agency can collect the debt administratively, it may initiate litigation. This notification will comply with Executive Order 12988 (3 CFR, 1996 Comp., pp. 157–163) and may be given as part of a demand letter under paragraph (b) of this section or in a separate document. NEH will notify DOJ that it has given this notice.

(h) When NEH learns that a bankruptcy petition has been filed with respect to a debtor, before proceeding with further collection action, the agency will immediately seek legal advice from its Office of the General Counsel concerning the impact of the Bankruptcy Code on any pending or contemplated collection activities. Unless NEH determines that the automatic stay imposed at the time of filing pursuant to 11 U.S.C. 362 has been lifted or is no longer in effect, in most cases NEH will immediately stop collection activity against the debtor.

(1) After seeking legal advice, in most cases NEH will file a proof of claim with the bankruptcy court or the Trustee. NEH will refer to the provisions of 11 U.S.C. 106 relating to the consequences on sovereign immunity of filing a proof of claim.

(2) If NEH is a secured creditor, it may seek relief from the automatic stay regarding its security, subject to the provisions and requirements of 11 U.S.C. 362.

(3) In most cases, offset is stayed by the automatic stay. However, NEH will seek legal advice from its Office of the General Counsel to determine whether it may freeze its payments to the debtor, and other agencies' payments that are available for offset, until it can obtain from the bankruptcy court relief from the automatic stay. NEH will also seek legal advice from its Office of the General Counsel to determine whether recoupment is available.

§ 1177.11 Collection by administrative offset.

(a) *Scope.* (1) The term ''administrative offset'' has the meaning provided in 31 U.S.C. 3701(a)(1).

(2) This section does not apply to:

(i) Debts arising under the Social Security Act, except as provided in 42 U.S.C. 404;

(ii) Payments made under the Social Security Act, except as provided for in 31 U.S.C. 3716(c) (see 31 CFR 285.4, Federal Benefit Offset);

(iii) Debts arising under, or payments made under, the Internal Revenue Code (see 31 CFR 285.2, Tax Refund Offset) or the tariff laws of the United States;

(iv) Offsets against Federal salaries to the extent these standards are inconsistent with regulations published to implement such offsets under 5 U.S.C. 5514 and 31 U.S.C. 3716 (see 5 CFR part 550, subpart K, and 31 CFR 285.7, Federal Salary Offset);

(v) Offsets under 31 U.S.C. 3728 against a judgment that a debtor obtained against the United States;

(vi) Offsets or recoupments under common law, State law, or Federal statutes specifically prohibiting offsets or recoupments of particular types of debts; or

(vii) Offsets in the course of judicial proceedings, including bankruptcy.

(3) Unless otherwise provided for by contract or law, NEH may collect debts or payments that are not subject to administrative offset under 31 U.S.C. 3716 by administrative offset under the common law or other applicable statutory authority.

(4) Unless otherwise provided by law, NEH will not collect a debt by administrative offset under the authority of 31 U.S.C. 3716 more than ten (10) years after the Government's right to collect the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not reasonably have been known by the Government official or officials who were charged with the responsibility to discover and collect such debts. This limitation does not apply to debts reduced to a judgment.

(5) In bankruptcy cases, NEH will seek legal advice from its Office of the General Counsel concerning the impact of the Bankruptcy Code, particularly 11 U.S.C. 106, 362, and 553, on pending or contemplated collections by offset.

(b) *Mandatory centralized administrative offset.* (1) NEH is required to refer past due, legally enforceable nontax debts which are over 180 days delinquent to the Secretary for collection by centralized administrative offset. NEH may also refer debts which are less than 180 days delinquent to the Secretary for this purpose. See paragraph (b)(5) of this section for debt certification requirements.

(2) The names and taxpayer identifying numbers (TINs) of debtors who owe debts which NEH referred to the Secretary as described in paragraph (b)(1) of this section will be compared to the names and TINs on payments to be made by Federal disbursing officials. Federal disbursing officials include disbursing officials of Treasury, the Department of Defense, the United States Postal Service, other Government corporations, and United States disbursing officials designated by the Secretary. When a debtor's name and TIN match a payee's name and TIN and all other requirements for offset have been met, the payment will be offset to satisfy the debt.

(3) Federal disbursing officials will notify the debtor/payee in writing that an offset has occurred to satisfy, in part or in full, a past due, legally enforceable delinquent debt. The notice will include a description of the type and amount of the payment from which the offset was taken, the amount of offset that was taken, the identity of the creditor agency requesting the offset, and a contact point within the creditor agency who will respond to questions regarding the offset.

(4) NEH will initiate offsets only after:

(i) Sending the debtor written notice of the type and amount of the debt, NEH's intention to use administrative offset to collect the debt, and an explanation of the debtor's rights under 31 U.S.C. 3716; and

(ii) Giving the debtor the opportunity:

(A) To inspect and copy NEH records related to the debt;

(B) For a review within NEH of its determination of indebtedness; and

(C) To make a written agreement to repay the debt.

(5) NEH may omit the procedures set forth in paragraph (b)(4) of this section when:

(i) The offset is in the nature of a recoupment;

(ii) The debt arises under a contract as set forth in *Cecile Industries, Inc.* v. *Cheney,* 995 F.2d 1052 (Fed. Cir. 1993) (notice and other procedural protections

set forth in 31 U.S.C. 3716(a) do not supplant or restrict established procedures for contractual offsets accommodated by the Contracts Disputes Act); or

(iii) In the case of non-centralized administrative offsets conducted under paragraph (c) of this section, NEH first learns of the amount owed by the debtor when there is insufficient time before payment would be made to the debtor/payee to allow for prior notice and an opportunity for review. When NEH omits prior notice and an opportunity for review, it will give the debtor such notice and an opportunity for review as soon as practicable, and it will promptly refund any money which it ultimately finds the debtor did not owe to the Government.

(6) When an agency has previously given a debtor any of the required notice and review opportunities with respect to a particular debt (see *e.g.,* § 1177.10), NEH need not duplicate such notice and review opportunities before initiating administrative offset.

(7) When referring delinquent debts to the Secretary, NEH will certify, in a form acceptable to the Secretary, that:

(i) The debt(s) is (are) past due and legally enforceable; and

(ii) NEH has complied with all due process requirements under 31 U.S.C. 3716(a) and paragraphs (b)(4), (b)(5), and (b)(6) of this section.

(8) Payments that are prohibited by law from being offset are exempt from centralized administrative offset. The Secretary will exempt payments under means-tested programs from centralized administrative offset when the head of the payment certifying or authorizing agency requests in writing that the Secretary do so. Also, the Secretary may exempt other classes of payments from centralized offset upon the head of the payment certifying or authorizing agency's written request.

(9) NEH may offset benefit payments made under the Social Security Act (42 U.S.C. 301, *et seq.*), part B of the Black Lung Benefits Act (30 U.S.C. 921, *et seq.*), and any law administered by the Railroad Retirement Board (other than tier two (2) benefits), only in accordance with Treasury regulations, issued in consultation with the Social Security Administration, the Railroad Retirement Board, and the Office of Management and Budget. See 31 CFR 285.4.

(10) In accordance with 31 U.S.C. 3716(f), the Secretary may waive the Computer Matching and Privacy Protection Act of 1988's provisions concerning matching agreements and post-match notification and verification (5 U.S.C. 552a(o) and (p)) for centralized administrative offset upon receipt of a certification from NEH, as the creditor agency, that it has met the due process requirements enumerated in 31 U.S.C. 3716(a). NEH's certification in accordance with paragraph (b)(7) of this section will satisfy this requirement. If the Secretary grants such a waiver, only Treasury's Data Integrity Board is required to oversee any matching activities, in accordance with 31 U.S.C. 3716(g). This waiver authority does not apply to offsets conducted under paragraphs (c) and (d) of this section.

(c) *Non-centralized administrative offset.* (1) Generally, NEH will conduct non-centralized administrative offsets at its discretion on an ad hoc case-by-case basis, internally or in cooperation with the agency certifying or authorizing payments to the debtor. Unless otherwise prohibited by law, when centralized administrative offset is not available or appropriate, NEH may collect past due, legally enforceable non-tax delinquent debts through non-centralized administrative offset. In these cases, a creditor agency may make a request directly to a payment authorizing agency to offset a payment due a debtor in order to collect a delinquent debt. For example, it may be appropriate for a creditor agency to request that the Office of Personnel Management (OPM) offset a Federal employee's lump sum payment upon leaving Government service in order to satisfy an unpaid advance.

(2) Before requesting that a payment authorizing agency conduct a non-centralized administrative offset, NEH will provide:

(i) The debtor with due process as set forth in paragraphs (b)(4) through (6) of this section; and

(ii) The payment authorizing agency with written certification that the debtor owes past due, legally enforceable delinquent debt in the amount stated, and that NEH has fully complied with its regulations concerning administrative offset.

(3) Payment authorizing agencies will comply with offset requests by creditor agencies to collect debts owed to the United States, unless the offset would not be in the best interests of the United States with respect to the authorizing agency's program, or would otherwise be contrary to law. NEH will make appropriate use of other agencies' cooperative efforts in effecting collection by administrative offset.

(4) When collecting multiple debts by non-centralized administrative offset, NEH will apply the recovered amounts to those debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the specific case, particularly the applicable statute of limitations.

(d) *Requests to OPM to offset a debtor's anticipated or future benefit payments under the Civil Service Retirement and Disability Fund.* Upon providing OPM written certification that a debtor has been afforded the procedures provided in paragraphs (b)(4) through (6) of this section, NEH may request that OPM offset a debtor's anticipated or future benefit payments under the Civil Service Retirement and Disability Fund (Fund) in accordance with regulations codified at 5 CFR 831.1801–831.1808. Upon receipt of such a request, OPM will identify and ''flag'' a debtor's account in anticipation of the time when the debtor requests, or becomes eligible to receive, payments from the Fund. This will satisfy any requirement that NEH initiate offset prior to the expiration of the time limitations referenced in paragraph (a)(4) of this section.

(e) *Review Requirements.* (1) For purposes of this section, whenever NEH is required to afford a debtor a review, it will provide the debtor with a reasonable opportunity for an oral hearing when the debtor requests reconsideration of the debt and NEH determines that the question of indebtedness cannot be resolved by reviewing the documentary evidence; for example, when the validity of the debt turns on an issue of credibility or veracity.

(2) Unless otherwise required by law, an oral hearing under this section is not required to be a formal evidentiary hearing, although NEH will carefully document all significant matters discussed at the hearing.

(3) This section does not require an oral hearing with respect to debt collection systems in which a determination of indebtedness rarely involves issues of credibility or veracity and NEH has determined that the review of the written record is ordinarily an adequate means to correct prior mistakes.

(4) In those cases when an oral hearing is not required by this section, NEH will accord the debtor a ''paper hearing;'' that is, a determination of the request for reconsideration based upon a review of the written record.

§ 1177.12 Reporting debts.

(a) NEH procedures for reporting delinquent debts to credit bureaus and other automated databases will comply with the Bankruptcy Code and the Privacy Act of 1974, 5 U.S.C. 552a, as amended. The provisions of the Privacy Act do not apply to credit bureaus.

(b) NEH procedures for reporting delinquent consumer debts to credit bureaus will be consistent with the due process and other requirements contained in 31 U.S.C. 3711(e). When an agency has given a debtor any of the required notice and review opportunities with respect to a particular debt, NEH need not duplicate such notice and review opportunities before reporting that delinquent consumer debt to credit bureaus.

(c) NEH will report delinquent debts to the Department of Housing and Urban Development's Credit Alert Interactive Voice Response System (CAIVRS). NEH will contact the Director of Information Resources Management Policy and Management Division, Office of Information Technology, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410 for information about the CAIVRS program.

§ 1177.13 Contracting with private collection contractors and with entities that locate and recover unclaimed assets.

(a) Subject to the provisions of paragraph (b) of this section, NEH may contract with private collection contractors, as defined in 31 U.S.C. 3701(f), to recover delinquent debts, provided that:

(1) NEH retains the authority to resolve disputes, compromise debts, suspend or terminate collection activity, and refer debts for litigation;

(2) The private collection contractor is not allowed to offer the debtor, as an incentive for payment, the opportunity to pay the debt less the private collection contractor's fee unless NEH has granted such authority prior to the offer;

(3) The contract provides that the private collection contractor is subject to the Privacy Act of 1974, to the extent specified in 5 U.S.C. 552a(m), and to applicable Federal and state laws and regulations pertaining to debt collection practices, including but not limited to the Fair Debt Collection Practices Act, 15 U.S.C. 1692; and

(4) The private collection contractor is required to account for all amounts collected.

(b) NEH will use government-wide debt collection contracts to obtain debt collection services provided by private contractors. However, NEH may refer debts to private collection contractors pursuant to a contract with the private collection contractor only if such debts are not subject to the requirement to transfer debts to Treasury for collection. See 31 U.S.C. 3711(g); 31 CFR 285.12(e).

(c) NEH may fund private collection contractor contracts in accordance with 31 U.S.C. 3718(d), or as otherwise permitted by law.

(d) NEH may enter into contracts for locating and recovering United States assets, such as unclaimed assets. NEH will establish procedures that are acceptable to the Secretary before entering into contracts to recover United States assets held by a state government or a financial institution.

(e) NEH may enter into contracts for debtor asset and income search reports. In accordance with 31 U.S.C. 3718(d), such contracts may provide that the fee a contractor charges NEH for such services may be payable from the amounts recovered, unless otherwise prohibited by statute.

§ 1177.14 Suspension or revocation of eligibility for federal financial assistance.

(a) Unless waived by the Chairperson (or the Chairperson's designee), NEH will not extend financial assistance, which includes grants, cooperative agreements, contracts, loans, loan guarantees, or loan insurance to any person delinquent on a nontax debt owed to a Federal agency. NEH may extend credit after the delinquency has been resolved. The Secretary may exempt classes of debts from this prohibition and has prescribed standards defining when a ''delinquency'' is ''resolved'' for purposes of this prohibition. See 31 CFR 285.13 (Barring Delinquent Debtors from Obtaining Federal Loans or Loan Insurance or Guarantees).

(b) In non-bankruptcy cases, when NEH is seeking the collection of statutory penalties, forfeitures, or other types of claims, it will consider suspending or revoking a debtor's licenses, permits, grants, cooperative agreements, contracts, or other privileges for inexcusable or willful failure to pay such a debt in accordance with NEH's regulations or governing procedures. In its written demand for payment, NEH will advise the debtor of the agency's ability to suspend or revoke licenses, permits, grants, cooperative agreements, contracts, or other privileges. In instances where NEH is making, guaranteeing, insuring, acquiring, or participating in grants, cooperative agreements, contracts, or loans, it will consider suspending or disqualifying any lender, contractor, grantee, partner, counterparty, broker, or participant from doing further business with NEH or engaging in programs, agreements, or activities that are sponsored, co-sponsored or otherwise supported by NEH if such lender, contractor, grantee, partner, counterparty, broker, or participant fails to pay its debts to the Government within a reasonable time or if such lender, contractor, grantee, partner, counterparty, broker, or participant has been suspended, debarred, or disqualified from participation in a program, agreement, or activity by another Federal agency. NEH will report to Treasury the failure of any surety to honor its obligations in accordance with 31 U.S.C. 9305. The Treasury will forward to all interested agencies a notification that a surety's certificate of authority to do business with the Government has been revoked by Treasury.

(c) NEH will also extend the suspension or revocation of licenses, permits, grants, cooperative agreements, contracts, or other privileges to Federal programs, agreements, or activities that are administered by the states or other third parties on behalf of the Federal Government, to the extent that they affect the Federal Government's ability to collect money or funds owed by debtors. Therefore, states or other third parties that manage Federal programs, agreements, or activities, pursuant to NEH approval, should ensure that appropriate steps are taken to safeguard against issuing licenses, permits, grants, cooperative agreements, contracts, or other privileges to debtors who fail to pay their debts to the Federal Government.

(d) In bankruptcy cases, before advising the debtor of its intention to suspend or revoke licenses, permits, grants, cooperative agreements, contracts, or other privileges, NEH will seek legal advice from its Office of the General Counsel concerning the impact of the Bankruptcy Code, particularly 11 U.S.C. 362 and 525, which may restrict such action.

§ 1177.15 Liquidation of collateral.

(a) NEH will liquidate security or collateral through the exercise of a power of sale in the security instrument or a nonjudicial foreclosure, and apply the proceeds to the applicable debt(s), if the debtor fails to pay the debt(s) within a reasonable time after demand and if such action is in the best interest of the United States. Collection from other sources, including liquidation of security or collateral, is not a prerequisite to requiring payment by a surety, insurer, or guarantor unless such action is expressly required by statute or contract.

(b) When NEH learns that a bankruptcy petition has been filed with respect to a debtor, the agency will seek legal advice from its Office of the General Counsel concerning the impact of the Bankruptcy Code, including but not limited to 11 U.S.C. 362, to

determine the applicability of the automatic stay and the procedures for obtaining relief from such stay prior to proceeding under paragraph (a) of this section.

§ 1177.16 Collection in installments.

(a) Whenever feasible, NEH will collect the total amount of a debt in one lump sum. If a debtor is financially unable to pay a debt in one lump sum, NEH may accept payment in regular installments. NEH will obtain financial statements from debtors who represent that they are unable to pay in one lump sum and independently verify such representations whenever possible (see § 1177.22(g) of this part). If NEH agrees to accept payments in regular installments, it will obtain a legally enforceable written agreement from the debtor that specifies all of the terms of the arrangement and that contains a provision accelerating the debt in the event of default.

(b) The size and frequency of installment payments will bear a reasonable relation to the size of the debt and the debtor's ability to pay. If possible, the installment payments should be sufficient in size and frequency to liquidate the debt in three years or less.

(c) NEH will obtain security for deferred payments, in appropriate cases. NEH may accept installment payments notwithstanding the debtor's refusal to execute a written agreement or to give security, at the agency's option.

§ 1177.17 Interest, penalties, and administrative costs.

(a) Except as provided in paragraphs (g), (h), and (i) of this section, NEH will charge interest, penalties, and administrative costs on debts owed to the United States pursuant to 31 U.S.C. 3717. NEH will mail or hand-deliver a written notice to the debtor, at the debtor's most recent address available to NEH, explaining the agency's requirements concerning these charges, except where these requirements are included in a contractual or repayment agreement. These charges shall continue to accrue until the debt is paid in full or otherwise resolved through compromise, termination, or waiver of the charges.

(b) NEH will charge interest on debts owed the United States as follows:

(1) Interest will accrue from the date of delinquency, or as otherwise provided by law.

(2) Unless otherwise established in a grant, cooperate agreement, contract, repayment agreement, or by statute, the rate of interest that NEH charges will be the rate that the Secretary establishes annually in accordance with 31 U.S.C. 3717. Pursuant to 31 U.S.C. 3717, NEH may charge a higher rate of interest if it reasonably determines that a higher rate is necessary to protect the rights of the United States. NEH will document the reason(s) for its determination that the higher rate is necessary.

(3) The rate of interest that NEH initially charges will remain fixed for the duration of the indebtedness. When a debtor defaults on a repayment agreement and seeks to enter into a new agreement, NEH may require payment of interest at a new rate that reflects the Treasury's value of funds at the time the new agreement is executed. NEH will not compound interest; that is, it will not charge interest on interest, penalties, or administrative costs required by this section. If, however, a debtor defaults on a previous repayment agreement, NEH will add to the principal under the new repayment agreement any charges that accrued but which NEH did not collect under the defaulted agreement.

(c) NEH will assess administrative costs it incurred for processing and handling delinquent debts. NEH will base its calculation of administrative costs on the actual costs it incurred or upon its estimated costs.

(d) Unless otherwise established in a contract, repayment agreement, or by statute, NEH will charge a penalty, pursuant to 31 U.S.C. 3717(e)(2), not to exceed six (6) percent a year on the amount due on a debt that is delinquent for more than ninety (90) days. This charge shall accrue from the date of delinquency.

(e) NEH may increase an ''administrative debt'' by the cost-of-living adjustment in lieu of charging interest and penalties under this section. ''Administrative debt'' includes but is not limited to a debt based on fines, penalties, and overpayments, but does not include a debt based on the extension of Government credit, such as those arising from loans and loan guaranties. The cost-of-living adjustment is the percentage by which the Consumer Price Index for the month of June of the calendar year preceding the adjustment exceeds the Consumer Price Index for the month of June of the calendar year in which the debt was determined or last adjusted. NEH will annually compute increases to administrative debts. NEH will use this alternative only when there is a legitimate reason to do so, such as when calculating interest and penalties on a debt would be extremely difficult because of the debt's age.

(f) When a debtor pays a debt in partial or installment payments, the Government will first apply the amount it receives to any contingency fees added to the debt, second to outstanding penalties, third to administrative costs other than contingency fees, fourth to interest, and last to principal. For purposes of this paragraph (f), ''contingency fees'' are administrative costs resulting from fees paid by a Federal agency to other Federal agencies or private collection contractors for collection services rendered when the fees are paid from the amounts collected from a debtor.

(g) NEH will waive the collection of interest and administrative costs imposed pursuant to this section on the portion of the debt that the debtor pays within thirty (30) days after the date on which interest began to accrue. NEH may extend this thirty-day period on a case-by-case basis. In addition, NEH may waive interest, penalties, and administrative costs charged under this section, in whole or in part, without regard to the amount of the debt, either under the criteria set forth in these standards for the compromise of debts, or if NEH determines that collection of these charges is against equity and good conscience or is not in the best interest of the United States.

(h) NEH will not suspend the assessment of interest, penalties, and administrative costs during the administrative review of a debt, except for periods during which it has suspended collection activity under § 1177.29 of this part.

(i) NEH is authorized to impose interest and related charges on debts not subject to 31 U.S.C. 3717, in accordance with the common law.

§ 1177.18 Analysis of costs.

NEH will periodically compare costs incurred and amounts collected. NEH will use data on costs and corresponding recovery rates for debts of different types and in various dollar ranges to compare the cost effectiveness of alternative collection techniques, establish guidelines with respect to points at which costs of further collection efforts are likely to exceed recoveries, assist in evaluating compromise offers, and establish minimum debt amounts below which collection efforts need not be taken.

§ 1177.19 Use and disclosure of mailing addresses.

(a) When attempting to locate a debtor in order to collect or compromise a debt under this part or other authority, NEH may send a request to the Secretary to obtain a debtor's mailing address from the Internal Revenue Service's records.

(b) NEH is authorized to use mailing addresses it obtained under paragraph

(a) of this section to enforce collection of a delinquent debt and may disclose such mailing addresses to other agencies and to collection agencies for collection purposes.

§ 1177.20 Exemptions.

(a) The preceding sections of this part, to the extent that they reflect remedies or procedures prescribed by the Debt Collection Act of 1982 and the DCIA, such as administrative offset, use of credit bureaus, contracting for collection agencies, and interest and related charges, do not apply to debts arising under, or payments made under, the Internal Revenue Code of 1986, as amended (26 U.S.C. 1, *et seq.*); the Social Security Act (42 U.S.C. 301, *et seq.*), except to the extent provided under 42 U.S.C. 404 and 31 U.S.C. 3716©; or the tariff laws of the United States. These remedies and procedures, however, may be authorized with respect to debts that are exempt from the Debt Collection Act of 1982 and the DCIA, to the extent that they are authorized under some other statute or the common law.

(b) NEH does not construe this section as prohibiting its use of these authorities or requirements when collecting debts owed by persons employed by agencies administering the laws cited in paragraph (a) of this section, unless the debt arose under those laws.

Subpart C—Standards for the Compromise of Claims

§ 1177.21 Scope and application.

(a) The standards set forth in this subpart apply to the compromise of debts pursuant to 31 U.S.C. 3711. NEH may exercise such compromise authority for debts that arise out of its activities, or that are referred or transferred to it for collection services, when the amount of the debt then due, exclusive of interest, penalties, and administrative costs, does not exceed $100,000 or any higher amount authorized by the Attorney General. The Chairperson may designate officials within NEH to exercise the authorities in this section.

(b) Unless otherwise provided by law, when the principal balance of a debt, exclusive of interest, penalties, and administrative costs, exceeds $100,000 or any higher amount authorized by the Attorney General, the authority to accept the compromise rests with DOJ. NEH will evaluate the compromise offer, using the factors set forth in this subpart. If NEH finds that an offer to compromise a debt in excess of $100,000 is acceptable, it will refer the debt to the Civil Division or other appropriate litigating division in DOJ using a Claims Collection Litigation Report (CCLR). NEH may obtain the CCLR from DOJ's National Central Intake Facility. The referral will include appropriate financial information and a recommendation for the acceptance of the compromise offer. DOJ approval is not required if NEH rejects a compromise offer.

§ 1177.22 Bases for compromise.

(a) NEH may compromise a debt if the Government cannot collect the full amount because:

(1) The debtor is unable to pay the full amount in a reasonable time, as verified through credit reports or other financial information;

(2) The Government is unable to collect the debt in full by enforced collection proceedings within a reasonable time;

(3) The cost of collecting the debt does not justify the enforced collection of the full amount; or

(4) There is significant doubt concerning the Government's ability to prove its case in court.

(b) NEH will consider the following relevant factors when determining the debtor's inability to pay:

(1) The debtor's age and health;

(2) The debtor's present and potential income;

(3) The debtor's inheritance prospects;

(4) The possibility that the debtor has concealed or improperly transferred assets; and

(5) The availability of assets or income that may be realized by enforced collection proceedings.

(c) NEH will verify the debtor's claim of inability to pay by using a credit report and other financial information as provided in paragraph (g) of this section. NEH will consider the applicable exemptions available to the debtor under state and Federal law in determining the Government's ability to enforce collection. NEH also may consider uncertainty as to the price that collateral or other property will bring at a forced sale in determining the Government's ability to enforce collection. A compromise that NEH effects under this section will be for an amount that bears a reasonable relation to the amount that can be recovered by enforced collection procedures, with regard to the exemptions available to the debtor and the time that collection will take.

(d) If there is significant doubt concerning the Government's ability to prove its case in court for the full amount claimed, either because of the legal issues involved or because of a bona fide dispute as to the facts, then the amount that NEH accepts in compromise of such cases should fairly reflect the probabilities of successful prosecution to judgment, with due regard given to the availability of witnesses and other evidentiary support for the Government's claim. In determining the litigative risks involved, NEH will consider the probable amount of court costs and attorney fees pursuant to the Equal Access to Justice Act, 28 U.S.C. 2412, that may be imposed against the Government if it is unsuccessful in litigation.

(e) NEH may compromise a debt if the cost of collecting the debt does not justify the enforced collection of the full amount. The amount NEH accepts in compromise in such cases may reflect an appropriate discount for the administrative and litigative costs of collection, with consideration given to the time it will take to effect collection. Collection costs may be a substantial factor in the settlement of small debts. In determining whether the cost of collecting justifies enforced collection of the full amount, NEH will consider whether continued collection of the debt, regardless of cost, is necessary to further an enforcement principle, such as the Government's willingness to pursue aggressively defaulting and uncooperative debtors.

(f) NEH generally will not accept compromises payable in installments. This is not an advantageous form of compromise in terms of time and administrative expense. If, however, payment of a compromise in installments is necessary, NEH will obtain a legally enforceable written agreement providing that, in the event of default, the debtor's full original principal balance prior to compromise, less sums paid thereon, will be reinstated. Whenever possible, NEH also will obtain security for repayment in the manner set forth in subpart B of this part.

(g) To assess the merits of a compromise offer based in whole or in part on the debtor's inability to pay the full amount of a debt within a reasonable time, NEH will obtain a current financial statement from the debtor, executed under penalty of perjury, showing the debtor's assets, liabilities, income, and expenses. NEH also may obtain credit reports or other financial information to assess compromise offers. NEH may use its own financial information form or may request suitable forms from DOJ or the local United States Attorney's Office.

§ 1177.23 Enforcement policy.

Pursuant to this subpart, NEH may compromise statutory penalties, forfeitures, or claims that it established as an aid to enforcement and to compel compliance, if NEH's enforcement policy in terms of deterrence and securing compliance, present and future, will be adequately served by the agency's acceptance of the compromise offer.

§ 1177.24 Joint and several liability.

a. When two or more debtors are jointly and severally liable, NEH will pursue collection activity against all debtors, as appropriate. NEH will not attempt to allocate the burden of payment between the debtors but will proceed to liquidate the indebtedness as quickly as possible.

b. NEH will ensure that a compromise agreement with one debtor does not release the agency's claim against the remaining debtors. The amount of a compromise with one debtor will not be considered a precedent or binding in determining the amount that will be required from other debtors jointly and severally liable on the claim.

§ 1177.25 Further review of compromise offers.

If NEH is uncertain whether to accept a firm, written, substantive compromise offer on a debt that is within the agency's delegated compromise authority, it may refer the offer to the Civil Division or other appropriate litigating division in DOJ, using a CCLR accompanied by supporting data and particulars concerning the debt. DOJ may act upon such an offer or return it to NEH with instructions or advice.

§ 1177.26 Consideration of tax consequences to the Government.

In negotiating a compromise, NEH will consider the tax consequences to the Government. In particular, NEH will consider requiring a waiver of the debtor's tax-loss-carry-forward and tax-loss-carry-back rights. For information on discharge of indebtedness reporting requirements, see § 1177.32.

§ 1177.27 Mutual releases of the debtor and the Government.

In all appropriate instances, NEH will implement acceptable compromises by means of a mutual release, in which the debtor is released from further non-tax liability on the compromised debt in consideration of payment in full of the compromise amount and the Government and its officials, past and present, are released and discharged from any and all of the debtor's claims and causes of action arising from the same transaction. In the event NEH does not execute a mutual release when it compromises a debt, unless prohibited by law, the debtor is still deemed to have waived any and all claims and causes of action against the Government and its officials related to the transaction that gave rise to the compromised debt.

Subpart D—Standards for Suspending or Terminating Collection Activity

§ 1177.28 Scope and application.

(a) The standards set forth in this subpart apply to the suspension or termination of collection activity, pursuant to 31 U.S.C. 3711, on debts that do not exceed $100,000, or such other amount as the Attorney General may direct, exclusive of interest, penalties, and administrative costs, after deducting the amount of partial payments or collections, if any. Prior to referring a debt to DOJ for litigation, NEH may suspend or terminate collection under this subpart with respect to debts that arise out of its activities, or that are referred or transferred to it for collection services.

(b) If, after deducting the amount of any partial payments or collections, the principal amount of a debt exceeds $100,000, or such other amount as the Attorney General may direct, exclusive of interest, penalties, and administrative costs, the authority to suspend or terminate rests solely with DOJ. If NEH believes that suspension or termination of any debt in excess of $100,000 may be appropriate, it will refer the debt to the Civil Division or other appropriate litigating division in DOJ, using the CCLR. The referral will specify the reasons for NEH's recommendation. If, prior to referral to the DOJ, NEH determines that a debt is plainly erroneous or clearly without legal merit, NEH may terminate collection activity without obtaining DOJ concurrence, regardless of the amount involved.

§ 1177.29 Suspension of collection activity.

(a) NEH may suspend collection activity on a debt when:

(1) NEH cannot locate the debtor;

(2) NEH expects the debtor's financial condition to improve; or

(3) The debtor has requested a waiver or review of the debt.

(b) NEH may suspend collection activity on a debt when, based on the debtor's current financial condition, the debtor's future prospects justify retention of the debt for periodic review and collection activity and:

(1) The applicable statute of limitations has not expired; or

(2) Future collection can be effected by administrative offset, notwithstanding the expiration of the applicable statute of limitations for litigation of claims, with due regard to the ten-year limitation for administrative offset prescribed by 31 U.S.C. 3716(e)(1); or

(3) The debtor agrees to pay interest on the amount of the debt on which collection will be suspended, and such suspension is likely to enhance the debtor's ability to pay the full amount of the debt with interest at a later date.

(c)(1) NEH will suspend collection activity during the time required to consider the debtor's request for waiver or administrative review of the debt, if the statute under which the debtor makes the request prohibits NEH from collecting the debt during that time.

(2) If the statute under which the debtor makes the request does not prohibit collection activity pending consideration of the debtor's request, NEH may use discretion, on a case-by-case basis, to suspend collection. Further, NEH ordinarily will suspend collection action upon a request for waiver or review if a statute or regulation prohibits NEH from issuing a refund of amounts it collected prior to considering the debtor's request. However, NEH should not suspend collection when it determines that the request for waiver or review is frivolous or was made primarily to delay collection.

(d) If NEH learns that a bankruptcy petition has been filed with respect to a debtor, in most cases it must suspend the collection activity on that debtor's debt, pursuant to the provisions of 11 U.S.C. 362, 1201, and 1301, unless NEH can clearly establish that the automatic stay has been lifted or is no longer in effect. NEH will immediately seek legal advice from its Office of the General Counsel and, if legally permitted, take the necessary legal steps to ensure that the agency does not pay any funds or money to the debtor until it obtains relief from the automatic stay.

§ 1177.30 Termination of collection activity.

(a) NEH may terminate collection activity when:

(1) NEH is unable to collect any substantial amount through its own efforts or through the efforts of others;

(2) NEH is unable to locate the debtor;

(3) NEH anticipates that the costs of collection will exceed the amount recoverable;

(4) The debt is legally without merit or enforcement of the debt is barred by any applicable statute of limitations;

(5) NEH cannot substantiate the debt; or

(6) The debt against the debtor has been discharged in bankruptcy.

(b) Before terminating collection activity, NEH will have pursued all appropriate means of collection and determined, based upon the results of the collection activity, that the debt is uncollectible. Terminating collection activity ceases active collection of the debt but does not preclude NEH from retaining a record of the account for purposes of:

(1) Selling the debt, if the Secretary determines that such sale is in the best interests of the United States;

(2) Pursuing collection at a subsequent date in the event there is a change in the debtor's status or a new collection tool becomes available;

(3) Offsetting against future income or assets not available at the time the agency terminated collection activity; or

(4) Screening future applicants for prior indebtedness.

(c) Generally, NEH will terminate collection activity on a debt that has been discharged in bankruptcy, regardless of the amount. NEH may continue collection activity, however, subject to the provisions of the Bankruptcy Code, for any payments provided under a plan of reorganization. Offset and recoupment rights may survive the discharge of the debtor in bankruptcy and, under some circumstances, claims also may survive the discharge. For example, if NEH is a known creditor of the debtor, its claims may survive a discharge if it did not receive formal notice of the proceedings. NEH will seek legal advice from its Office of the General Counsel if it believes it has claims or offsets that may survive the discharge of a debtor.

§ 1177.31 Exception to termination.

When a significant enforcement policy is involved, or recovery of a judgment is a prerequisite to the imposition of administrative sanctions, NEH may refer debts for litigation even though termination of collection activity may otherwise be appropriate.

§ 1177.32 Discharge of indebtedness; reporting requirements.

(a) Before discharging a delinquent debt (also referred to as a close out of the debt), NEH will take all appropriate steps to collect the debt in accordance with 31 U.S.C. 3711(g), including, as applicable, administrative offset; tax refund offset; Federal salary offset; referral to Treasury, Treasury-designated debt collection centers, or private collection contractors; credit bureau reporting; wage garnishment; litigation; and foreclosure. Discharge of indebtedness is distinct from termination or suspension of collection activity under this subpart and is governed by the Internal Revenue Code. When NEH suspends or terminates collection action on a debt, the debt remains delinquent and NEH may pursue further collection action at a later date, in accordance with the standards set forth in this part. When NEH discharges a debt in full or in part, further collection action is prohibited. Therefore, NEH will make the determination that collection action is no longer warranted before discharging a debt. NEH must also terminate debt collection action before discharging a debt.

(b) Section 3711(i), title 31, United States Code, requires NEH to sell a delinquent nontax debt upon termination of collection action if the Secretary determines such a sale is in the best interests of the United States. Since the discharge of a debt precludes any further collection action (including the sale of a delinquent debt), NEH may not discharge a debt until it meets the requirements of 31 U.S.C. 3711(i).

(c) Upon discharge of an indebtedness, NEH must report the discharge to the IRS in accordance with the requirements of 26 U.S.C. 6050P and 26 CFR 1.6050P–1. NEH may request Treasury or Treasury-designated debt collection centers to file such a discharge report to the IRS on NEH's behalf.

(d) When discharging a debt, NEH must request that litigation counsel release any liens of record securing the debt.

Subpart E—Referrals to the Department of Justice

§ 1177.33 Prompt referral.

(a) NEH will promptly refer to DOJ for litigation any debts on which it has taken aggressive collection activity in accordance with subpart B of this part and that it cannot compromise, or on which it cannot suspend or terminate collection activity, in accordance with subparts C and D of this part. NEH may refer those debts arising out of its activities, or that were referred or transferred to it for collection services. NEH will refer debts for which the principal amount is over $1,000,000, or such other amount as the Attorney General my direct, exclusive of interest and penalties, to the Civil Division or other division responsible for litigating such debts at DOJ, Washington, DC. NEH will refer debts for which the principal amount is $1,000,000 or less, or such other amount as the Attorney General may direct, exclusive of interest or penalties, to DOJ's Nationwide Central Intake Facility as required by the CCLR instructions. NEH will refer debts as early as possible, consistent with aggressive agency collection activity and the standards contained in this part, and, in any event, well within the period for initiating timely lawsuits against the debtors. NEH will make every effort to refer delinquent debts to DOJ for litigation within one year of the date that such debts last became delinquent.

(b) DOJ has exclusive jurisdiction over the debts NEH refers to it, pursuant to this section. As the referring agency, NEH will immediately terminate its administrative debt collection activities at the time it refers the debt to the DOJ. NEH will advise DOJ of the collection activities it has utilized to date, and their result. NEH will refrain from having any contact with the debtor and shall direct all debtor inquiries concerning the debt to DOJ. NEH will immediately notify DOJ of any payments it credited to the debtor's account after it referred a debt under this section. DOJ will notify NEH, in a timely manner, of any payments it receives from the debtor.

§ 1177.34 Claims Collection Litigation Report.

(a) Unless excepted by DOJ, NEH will complete the CCLR (see § 1177.21(b)), accompanied by a signed Certificate of Indebtedness, to refer all administratively uncollectible claims to DOJ for litigation. As a referring agency, NEH will complete all sections of the CCLR that are appropriate to each claim, as required by the CCLR instructions, and furnish such other information as may be required in specific cases.

(b) NEH will indicate clearly on the CCLR the actions it wishes DOJ to take with respect to the referred claim. The CCLR permits NEH to indicate specifically any of a number of litigative activities which DOJ may pursue, including enforced collection, judgment lien only, renew judgment lien only, renew judgment lien and enforce collection, program enforcement, foreclosure only, and foreclosure and efficiency judgment.

(c) NEH also will use the CCLR to refer claims to DOJ to obtain approval of any proposals to compromise the claims or to suspend or terminate NEH collection activity.

§ 1177.35 Preservation of evidence.

When NEH refers claims to DOJ, it will take care to preserve all files and records that DOJ may need to prove its claims in court. NEH ordinarily will include certified copies of the documents that form the basis for its

claims in the packages it creates to refer its claims to DOJ for litigation. NEH will provide originals of such documents immediately upon DOJ's request.

§ 1177.36 Minimum amount of referrals to the Department of Justice.

(a) NEH will not refer to DOJ for litigation any claims of less than $2,500, exclusive of interest, penalties, and administrative costs, or such other amount as the Attorney General shall from time to time prescribe. DOJ will promptly notify NEH if the Attorney General changes this minimum amount.

(b) NEH will not refer claims of less than the minimum amount unless:

(1) Litigation to collect such smaller claims is important to ensure compliance with NEH's policies or programs;

(2) NEH is referring the claim solely for the purpose of securing a judgment against the debtor, which will be filed as a lien against the debtor's property pursuant to 28 U.S.C. 3201 and returned to NEH for enforcement; or

(3) The debtor has the clear ability to pay the claim and the Government can effectively enforce payment, with due regard for the exemptions available to the debtor under state and Federal law and the judicial remedies available to the Government.

(c) NEH will consult with the Executive Office for United States Attorneys' Financial Litigation Staff at the DOJ prior to referring claims valued at less than the minimum amount.

Dated: October 27, 2021.

Samuel Roth,

Attorney-Advisor, National Endowment for the Humanities.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 180117042–8884–02; RTID 0648–XB554]

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

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

ACTION: Temporary rule; quota transfer.

SUMMARY: NMFS is transferring 9.5 metric tons (mt) of Atlantic bluefin tuna (BFT) quota from the Reserve category and 20.2 mt from the Harpoon category to the General category for the remainder of the 2021 fishing year. The adjusted General category December subquota, Reserve category quota, and Harpoon category quota will be 39.1 mt, 2 mt, and 0 mt respectively. This action is intended to provide further opportunities for General category fishermen to participate in the December General category fishery, based on consideration of the regulatory determination criteria regarding inseason adjustments. This action would affect Atlantic Tunas General category (commercial) permitted vessels and Highly Migratory Species (HMS) Charter/Headboat permitted vessels with a commercial sale endorsement when fishing commercially for BFT.

DATES: Effective December 1, 2021, through December 31, 2021.

FOR FURTHER INFORMATION CONTACT: Larry Redd, Jr., *larry.redd@noaa.gov,* 301–427–8503, or Nicholas Velseboer, *nicholas.velsboer@noaa.gov,* 978–281–9260.

SUPPLEMENTARY INFORMATION: Atlantic HMS fisheries, including BFT fisheries, are managed under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*). The 2006 Consolidated Atlantic HMS Fishery Management Plan (FMP) and its amendments are implemented by regulations at 50 CFR part 635. Section 635.27 divides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) and as implemented by the United States among the various domestic fishing categories, per the allocations established in the 2006 Consolidated HMS FMP and its amendments. NMFS is required under the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest quotas under relevant international fishery agreements such as the ICCAT Convention, which is implemented domestically pursuant to ATCA.

The baseline General, Reserve, and Harpoon category quotas are 555.7 mt, 29.5 mt, and 46 mt respectively. The General category baseline subquota for the December time-period is 28.9 mt. On December 23, 2020, NMFS transferred 19.5 mt of BFT quota from the December 2021 subquota time-period to the January through March 2021 subquota time-period resulting in an adjusted subquota of 9.4 mt for the December 2021 time period (85 FR 83832, December 23, 2020).

To date for 2021, NMFS has published several actions that adjusted the Reserve and Harpoon category quotas (86 FR 8717, February 9, 2021; 86 FR 43420, August 9, 2021; 86 FR 51016, September 14, 2021; 86 FR 54659, October 4, 2021; 86 FR 54873, October 5, 2021). The current adjusted Reserve and Harpoon category quotas are 11.5 mt and 76 mt, respectively. Per § 635.27(a)(5), the Harpoon category fishery automatically closed for the year on November 15, 2021. At that time, 20.2 mt of the Harpoon category quota remained unharvested.

Quota Transfer

Under § 635.27(a)(9), NMFS has the authority to transfer quota among fishing categories or subcategories after considering determination criteria provided under § 635.27(a)(8). NMFS has considered all of the relevant determination criteria and their applicability to this inseason quota transfer. These considerations include, but are not limited to, the following:

Regarding the usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock (§ 635.27(a)(8)(i)), biological samples collected from BFT landed by General category fishermen and provided by tuna dealers provide NMFS with valuable parts and data for ongoing scientific studies of BFT age and growth, migration, and reproductive status. Additional opportunity to land BFT in the General category would support the continued collection of a broad range of data for these studies and for stock monitoring purposes.

NMFS also considered the catches of the General category quota to date (including during the summer/fall and winter fisheries in the last several years) and the likelihood of closure of that segment of the fishery if no adjustment is made (§ 635.27(a)(8)(ii) and (ix)). To date, preliminary landings data indicate that the Harpoon category landed 55.8 mt of the 76 mt adjusted Harpoon category quota before closing. Transferring 20.2 mt from the Harpoon category to the December 2021 subquota time-period would result in 29.6 mt (9.4 mt + 20.2 mt = 29.6 mt) being available to the General category in December, restoring the December subquota to roughly its base amount prior to the December 23, 2020 transfer (85 FR 83832). Without a quota transfer at this time, NMFS would likely need to close the General category fishery shortly after opening, and participants would have to stop BFT fishing activities while commercial-sized BFT remain available in the areas where

General category permitted vessels operate at this time of year. Transferring 9.5 mt of quota from the Reserve category in this same action would provide limited additional opportunities to harvest the U.S. BFT quota while avoiding exceeding it, leave 2 mt (11.5 mt − 9.5 mt = 2 mt) in the Reserve category to account for any BFT mortalities associated with research and/or any overharvests that may occur in December, and result in a total of 39.1 mt (29.6 mt + 9.5 mt = 39.1 mt) being available for the General category December 2021 subquota time period.

Regarding the projected ability of the vessels fishing under the General category quota to harvest the additional amount of BFT quota transferred before the end of the fishing year (§ 635.27(a)(8)(iii)), NMFS considered General category landings over the last several years and landings to date this year. Landings are highly variable and depend on access to commercial-sized BFT and fishing conditions, among other factors, such as the restrictions that some dealers placed on their purchases of BFT from General category participants this year. Thus, this quota transfer would allow fishermen to take advantage of the availability of BFT on the fishing grounds and provide a reasonable opportunity to harvest available U.S. BFT quota.

NMFS also considered the estimated amounts by which quotas for other gear categories of the BFT fishery might be exceeded (§ 635.27(a)(8)(iv)) and the ability to account for all 2021 landings and dead discards. In the last several years, total U.S. BFT landings have been below the available U.S. quota such that the United States has carried forward the maximum amount of underharvest allowed by ICCAT from one year to the next. NMFS recently took such an action to carryover the allowable 127.3 mt of underharvest from 2020 to 2021 (86 FR 54659). NMFS will need to account for 2021 landings and dead discards within the adjusted U.S. quota, consistent with ICCAT recommendations, and anticipates having sufficient quota to do that.

NMFS also considered the effects of the adjustment on the BFT stock and the effects of the transfer on accomplishing the objectives of the FMP (§ 635.27(a)(8)(v) and (vi)). This transfer would be consistent with established quotas and subquotas, which are implemented consistent with ICCAT recommendations (established in Recommendation 17–06 and maintained in Recommendation 20–06), ATCA, and the objectives of the 2006 Consolidated HMS FMP and amendments. In establishing these quotas and subquotas and associated management measures, ICCAT and NMFS considered the best scientific information available, objectives for stock management and status, and effects on the stock. This quota transfer is in line with the established management measures and stock status determinations. Another principal consideration is the objective of providing opportunities to harvest the available General category quota without exceeding the annual quota, based on the objectives of the 2006 Consolidated HMS FMP and its amendments, including to achieve optimum yield on a continuing basis and to allow all permit categories a reasonable opportunity to harvest available BFT quota allocations (related to § 635.27(a)(8)(x)). Specific to the General category, this includes providing opportunities equitably across all time-periods.

Given these considerations, NMFS is transferring 9.5 mt of the available 11.5 mt of Reserve category quota, and 20.2 mt from the Harpoon category quota to the General category. Therefore, NMFS adjusts the General category December 2021 subquota to 39.1 mt, adjusts the Reserve category quota to 2 mt to account for any BFT mortalities associated with research, and adjusts the Harpoon category quota to 0 mt. The General category fishery will remain open until December 31, 2021, or until the adjusted General category quota is reached, whichever comes first.

Monitoring and Reporting

NMFS will continue to monitor the BFT fishery closely. Dealers are required to submit landing reports within 24 hours of a dealer receiving BFT. Late reporting by dealers compromises NMFS' ability to timely implement actions such as quota and retention limit adjustments, as well as closures, and may result in enforcement actions. Additionally, and separate from the dealer reporting requirement, General category and HMS Charter/Headboat vessel owners are required to report the catch of all BFT retained or discarded dead within 24 hours of the landing(s) or the end of each trip, by accessing *hmspermits.noaa.gov* or by using the HMS Catch Reporting app or calling (888) 872–8862 (Monday through Friday from 8 a.m. until 4:30 p.m.).

Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional adjustments (*e.g.,* quota adjustment, daily retention limit adjustment, or closure) are necessary to ensure available quota is not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas. If needed, subsequent adjustments will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at (978) 281–9260, or access *hmspermits.noaa.gov,* for updates on quota monitoring and inseason adjustments.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act and regulations at 50 CFR part 635 and is exempt from review under Executive Order 12866.

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

The regulations implementing the 2006 Consolidated HMS FMP and its amendments provide for inseason retention limit adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. Affording prior notice and opportunity for public comment to implement the quota transfer for the December 2021 time-period is contrary to the public interest as such a delay would likely fail to prevent the closure of the General category fishery when the baseline subquota for the December time-period is met and the need to re-open the fishery, with attendant costs to the fishery, including administrative costs and lost fishing opportunities. The delay would preclude the fishery from harvesting BFT that are available on the fishing grounds and that might otherwise become unavailable during a delay. This action does not raise conservation and management concerns. Transferring quota from the Reserve and Harpoon categories to the General category does not affect the overall U.S. BFT quota, and the adjustment would have a minimal risk of exceeding the ICCAT-allocated quota. NMFS notes that the public had an opportunity to comment on the underlying rulemakings that established the U.S. BFT quota and the inseason adjustment criteria. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For these reasons, there also is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effective date.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: November 18, 2021.

Ngagne Jafnar Gueye,

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

[FR Doc. 2021–25557 Filed 11–23–21; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 211118–0239]

RIN 0648–BK64

Fisheries of the Northeastern United States; Amendment 7 to the Atlantic Bluefish Fishery Management Plan

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

ACTION: Final rule.

SUMMARY: NMFS approves and implements measures included in Amendment 7 to the Atlantic Bluefish Fishery Management Plan, as submitted by the Mid-Atlantic Fishery Management Council. This amendment revises the goals and objectives of the fishery management plan, reallocates quota between the commercial and recreational fisheries, reallocates commercial quota among the states, implements a rebuilding plan, revises the sector quota transfer process, and revises how management uncertainty is applied during the specifications process. Amendment 7 is intended to use the best scientific information available and respond to changes in stock health and distribution, while recognizing economic need and reliance throughout the management area.

DATES: Effective January 1, 2022.

ADDRESSES: The Mid-Atlantic Fishery Management Council prepared an environmental assessment (EA) for Amendment 7 to the Atlantic Bluefish Fishery Management Plan that describes the action and other considered alternatives. The EA provides a thorough analysis of the biological, economic, and social impacts of the measures implemented by this rule and the other alternatives considered, a Regulatory Impact Review, and economic analysis. Copies of Amendment 7, including the EA, the Regulatory Flexibility Act analyses, and other supporting documents for this action, are available upon request from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 N State Street, Dover, DE 19901. These documents are also accessible via the internet at *https://www.mafmc.org/supporting-documents.*

FOR FURTHER INFORMATION CONTACT: Cynthia Ferrio, Fishery Policy Analyst, (978) 281–9180.

SUPPLEMENTARY INFORMATION:

Background

The Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (Commission) cooperatively manage bluefish from Maine to Florida under the Atlantic Bluefish Fishery Management Plan (FMP). This joint Bluefish FMP was adopted in 1990. Since that time, the only substantial changes to management measures were made through Amendment 1 to the FMP in 2000, which established most measures and regulations currently managing the fishery, based on fishery data from 1981–1989. The Council and Commission initiated Amendment 7 to the FMP as a joint action in December 2017 to respond to changes in the bluefish fishery that have occurred over the past several decades while the FMP has remained largely unaltered. When first initiated, Amendment 7 was intended to address a comprehensive range of management issues, from updating the goals and objectives of the FMP to the allocation and transfer of quota between the commercial and recreational sectors.

Following the 2019 operational stock assessment's determination of the bluefish stock as overfished, the Council and the Commission's Bluefish Management Board (Board) added a rebuilding plan to the list of measures in Amendment 7. On June 8, 2021, the Council and Board took final action to adopt Amendment 7 in its entirety, with the intent that the measures would be effective and be used to set specifications for the 2022 fishing year, beginning on January 1, 2022.

NMFS published a Notification of Availability (NOA) for Amendment 7 in the **Federal Register** on September 1, 2021 (86 FR 48968), with a comment period ending on November 1, 2021. NMFS published a proposed rule for this action in the **Federal Register** on September 13, 2021 (86 FR 50866), with a comment period ending on October 13, 2021. See the Comments and Responses section for additional detail. The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) allows NMFS as the implementing agency to approve, partially approve, or disapprove measures recommended by the Council in a regulatory amendment based on whether the measures are consistent with the FMP, the Magnuson-Stevens Act and its National Standards, and other applicable law. After considering public comment on both the NOA and proposed rule, NMFS approved Amendment 7 in its entirety on November 12, 2021. This rule implements the management measures of Amendment 7.

Approved Measures

The purpose of this action is to implement a rebuilding plan for bluefish, as required by the Magnuson-Stevens Act, and to update the FMP using the best scientific information available to respond to changes in the fishery over time. NMFS approved all measures proposed in Amendment 7, as approved by the Council and Commission. This action implements Amendment 7 to the Bluefish FMP, as described below. For a more detailed description of each measure, see the **Federal Register** notice on the proposed rule prepared for this action.

FMP Goals and Objectives

Amendment 7 revises the bluefish goals and objectives that were adopted in 1991 to better reflect the current fishery. The following revisions were developed with extensive input from the public to better guide management of the bluefish fishery.

- *Goal 1:* Conserve the bluefish resource through stakeholder engagement to maintain sustainable recreational fishing and commercial harvest.
  - *Objective 1.1:* Achieve and maintain a sustainable spawning stock biomass and rate of fishing mortality.
  - *Objective 1.2:* Promote practices that reduce release mortality within the recreational and commercial fishery.
  - *Objective 1.3:* Maintain effective coordination between the National Marine Fisheries Service, Council, Commission, and member states by promoting compliance and to support the development and implementation of management measures.
  - *Objective 1.4:* Promote compliance and effective enforcement of regulations.
  - *Objective 1.5:* Promote science, monitoring, and data collection that support and enhance effective ecosystem-based management of the bluefish resource.
- *Goal 2:* Provide fair and equitable access to the fishery across all user groups throughout the management unit.

○ *Objective 2.1:* Ensure the implementation of management measures provides fair and equitable access to the resource across all user groups within the management unit.

○ *Objective 2.2:* Consider the economic and social needs and priorities of all groups that access the bluefish resource in the development of new management measures.

○ *Objective 2.3:* Maintain effective coordination with stakeholder groups to ensure optimization of economic and social benefits.

Quota Reallocation Between the Commercial and Recreational Fishery Sectors

This action allocates 14 percent of the annual catch limit (ACL) to the commercial fishery, and 86 percent to the recreational fishery, representing a 3-percentage point shift from the prior split (17 percent commercial and 83 percent recreational). The initial sector allocations were based on landings data from 1981–1989, and these revised sector allocations are based on updated landings data from 2009–2018. Catch data from 1981–2018, and landings data from 2014–2018, also resulted in the same allocation percentages.

Commercial Quota Reallocation Among the States

The coastwide commercial quota for bluefish is allocated annually to each state within the management unit from Maine to Florida based on a percentage determined in the FMP. Amendment 7 revises these commercial quota allocations among the states based on a recent, representative 10 years of landings data (2009–2018) for the commercial fishery to better capture how the stock and fishing activity have shifted over time. These revised allocations also include a 0.1-percent minimum default allocation to ensure that no state in the management unit is excluded from the commercial fishery entirely. This action will also phase in the changes in quota allocation over a period of seven years, beginning in 2022.

TABLE 1—COMPARISON OF INITIAL AND REVISED COMMERCIAL QUOTA ALLOCATIONS AMONG THE ATLANTIC STATES

State	Old commercial quota allocation (in percent)	Revised commercial quota allocation (in percent)
Maine	0.67	0.01
New Hampshire	0.41	0.12
Massachusetts	6.72	10.16
Rhode Island	6.81	9.64
Connecticut	1.27	1.00
New York	10.39	19.94
New Jersey	14.82	13.94
Delaware	1.88	0.40
Maryland	3.00	1.84
Virginia	11.88	5.85
North Carolina	32.06	32.38
South Carolina	0.04	0.00
Georgia	0.01	0.00
Florida	10.06	4.75

Rebuilding Plan

The 2019 operational assessment determined that the Atlantic bluefish stock is overfished but not subject to overfishing. Amendment 7 implements a rebuilding plan using a constant fishing mortality model (F = 0.154) to rebuild the stock in seven years, beginning in fishing year 2022. This rebuilding plan was selected because it allows for the least disruption to industry and minimizes negative socio-economic impacts, while still rebuilding the stock within the 10-year period required by the Magnuson-Stevens Act. This rebuilding will be reviewed and revised as necessary every 2 years, as required by section 304(e)(7) of the Magnuson-Stevens Act. Specifications for the 2022 fishing year will be included in a separate rulemaking action and will be based on this rebuilding plan.

Sector Quota Transfer

This action revises the sector transfer measures within the Bluefish FMP to allow quota to be transferred in either direction between the fishery sectors (from commercial to recreational or vice versa). This amendment also revises the maximum transfer cap to be 10-percent of the acceptable biological catch, allowing the size of the transfer to scale with the biomass of the stock. Sector transfers may not occur when the bluefish stock is overfished or subject to overfishing.

Management Uncertainty in the Specifications Process

This amendment revises how management uncertainty is accounted for during the specifications process. Previously, the fishery-level ACL could be reduced by a buffer to account for sources of management uncertainty before quota is allocated to the separate commercial and recreational fishery sectors. This action revises the specifications process so that quota is allocated to each sector first, and then a management uncertainty buffer may be applied separately within each sector. This targeted approach provides more management flexibility, and allows for the identification of sources of management uncertainty that are specific to one sector, but may not be present in the other.

Comments and Responses

We received 10 comments during the NOA and proposed rule comment periods. Three of the comments received were unrelated to the bluefish fishery and this action and are not addressed further. Of the comments received that were relevant to this action, there was balanced support for, and opposition to, this amendment. No changes were made to the proposed measures in this final rule as a result of these comments.

Comment 1: An anonymous commenter strongly supported this

action, specifically the rebuilding plan, noting the long-term biological and economic benefits.

Response 1: NMFS agrees and is approving Amendment 7 in its entirety, including the rebuilding plan.

Comment 2: Two comments from for-hire recreational head boat captains expressed distrust in the data used to develop this action. The commenters stated that the recreational fishery is catching more bluefish than the commercial gillnet vessels and should be allocated more quota. Neither commenter believes that overfishing of bluefish is occurring, and both think that the recreational quotas should be increased while commercial quotas should be decreased.

Response 2: The best scientific information available was used to develop this action and calculate the percentages of the quota to be reallocated to each sector. Additionally, this action used a more recent time period as the basis for the recreational and commercial allocations to better reflect the current conditions of the stock and the fishery. Catch data do indicate that over 85 percent of bluefish caught on the Atlantic coast are caught by the recreational sector. As a result, Amendment 7 does increase the amount of annual quota allocated to the recreational sector and decrease the amount to the commercial sector in its sector reallocation; to better reflect the needs of the overall fishery. NMFS agrees that overfishing does not appear to be occurring at this time.

Comment 3: A fisheries wholesaler from Florida submitted a comment expressing concern about the loss of commercial quota to Florida under this action, as well as a lack of confidence in the Marine Recreational Information Program (MRIP) data used for the recreational fishery. The commenter suggested that the proposed state allocations be reconsidered to account for unforeseen bad weather in recent years, which skewed landings lower in some states (such as Florida). The commenter also suggested that MRIP be improved, especially with regard to accounting for dead discards and the difference between private anglers and charter/party/head boat catch.

Response 3: The commercial quota reallocation in this action is based on the best scientific data available, and the percentages allocated to each state were calculated using landings data from a 10-year period that should balance out any outlier years due to bad weather. The new commercial allocations are intended to be the best representation of where the bluefish stock is shifting, and where the fishery has been operating in recent years in an effort to minimize the need for state-to-state transfers. However, those transfers are still available as a tool to prevent a state overage in years of high landings. NMFS is also phasing in the implementation of the commercial quota reallocation over seven years to allow states and industry to adjust to the changes more easily.

Comment 4: One commenter expressed strong support for the action, noting specific approval of the rebuilding plan and the increased regulatory flexibility introduced by Amendment 7. This commenter also asked what agency regulates the bluefish fishery, and enforces and manages the commercial fishery quotas; as well as if any regulations are in place to reduce the damaging effects of gillnets.

Response 4: NMFS agrees and is approving and implementing Amendment 7. By doing this, and as described in the EA and supporting documents, NMFS is the agency responsible for managing the Federal bluefish fishery and the measures in this amendment. Further, all of the details of the gear requirements and fishery impacts are described in the EA for this action and the Bluefish FMP.

Comment 5: An anonymous college student submitted a comment in support of Amendment 7. However, the commenter misunderstood the rebuilding plan measures in this action as a plan to stockpile/restock rivers and spawning ''bodies of water'' with juvenile bluefish to increase the coastal populations, which is inaccurate. The comment also includes a few questions about impacts to habitat and other fish species.

Response 5: The rebuilding plan included in this action works toward an improved stock status by managing catch limits and minimizing fishing mortality of bluefish, not by restocking spawning grounds or affecting recruitment. All of the questions about impacts of Amendment 7 are clearly addressed and described in the EA for the action.

Comment 6: A commenter from New Jersey wrote that while it is important to restrict bluefish catch to rebuild the stock, the recreational possession limit for shore anglers and boat fishermen should be the same at five fish.

Response 6: This amendment does not address the recreational management measures, such as bag limits. These measures are reviewed during the annual specifications process.

Changes From the Proposed Rule

There are no changes to the measures from the proposed rule.

Classification

Pursuant to section 304(b)(3) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that Amendment 7 to the Atlantic Bluefish FMP is necessary for the conservation and management of the Atlantic bluefish fishery, and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

The Council reviewed the regulations for this action and deemed them necessary and appropriate to implement consistent with section 303(c) of the Magnuson-Stevens Act.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

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

This action contains no information collection requirements under the Paperwork Reduction Act of 1995.

Final Regulatory Flexibility Analysis

A final regulatory flexibility analysis (FRFA) was prepared for this action pursuant to 5 U.S.C. 604(a), and is included in this final rule. The FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, NMFS' responses to those comments, and a summary of the analyses completed to support the action. A public copy of the EA containing the IRFA is available from the Council (see **ADDRESSES**). The preamble to the proposed rule included a detailed summary of the analyses contained in the IRFA, and that discussion is not repeated here.

A Summary of the Significant Issues Raised by the Public in Response to the IRFA, a Summary of the Agency's Assessment of Such Issues, and a Statement of Any Changes Made in the Final Rule as a Result of Such Comments

NMFS did not receive any comments in response to the IRFA or regulatory flexibility analysis (RFA) process. Refer to the Comments and Responses section of this rule's preamble for more detail on the public comments that were received on this action. No changes to the proposed rule were made as a result of public comments.

Description and Estimate of Number of Small Entities to Which the Rule Would Apply

This final rule affects those small entities engaged in commercial fishing operations in the Atlantic bluefish fishery (those with commercial bluefish

permits), and those with Federal party/charter recreational permits for bluefish. Private recreational anglers are not considered ''entities'' under the RFA, thus economic impacts on private anglers are not considered here. For the purposes of the RFA analysis, the ownership entities (or firms), not the individual vessels, are considered to be the regulated entities. Ownership entities are defined as those entities or firms with common ownership personnel as listed on the permit application. Because of this, some vessels with bluefish permits may be considered to be part of the same firm because they may have the same owners. To identify these small and large firms, vessel ownership data from the permit database were grouped according to common owners and sorted by size. In terms of RFA, a business primarily engaged in commercial fishing is classified as a small business if it has combined annual receipts not in excess of $11 million for all its affiliated operations worldwide. A business primarily engaged in for-hire (party/charter) fishing is classified as a small business if it has combined annual receipts not in excess of $8 million.

The current ownership data set used in this analysis is based on calendar years 2018–2020 (the most recent and complete data available). According to the vessel ownership database, 526 commercial fishing affiliate firms landed bluefish during the 2018–2020 period, with 521 of those entities categorized as small businesses, and 5 categorized as large businesses. The 3-year average (2018–2020) combined gross receipts (all species combined) for all small entities only was $197,251,017 and the average bluefish receipts was $899,490; this indicates that bluefish revenues contributed approximately 0.46 percent of the total gross receipts for these small entities.

For the recreational for-hire (party/charter) fishery, 361 for-hire affiliate firms reported revenue from recreational fishing for various species from 2018–2020. All 361 of those firms are categorized as small businesses. It is not possible to derive what proportion of the overall revenues for these for-hire firms came from fishing activities for an individual species. Nevertheless, given the popularity of bluefish as a recreational species in the Mid-Atlantic and New England, it is likely that revenues generated from bluefish may be somewhat important for many of these firms at certain times of the year. The 3-year average (2018–2020) combined gross receipts (all for-hire fishing activity combined) for these small entities was $49,916,903, ranging from less than $10,000 for 105 entities (lowest value $46) to over $1,000,000 for 8 entities (highest value $3.6 million).

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

There are no new reporting, recordkeeping, or other compliance requirements included in this final rule.

Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes

As noted in the proposed rule and the IRFA, this amendment implements several measures that could potentially impact small businesses in both the commercial and recreational sectors of the bluefish fishery; most notably the reallocation of quota among the sectors and states, the rebuilding plan, and the revision of the sector quota transfer measures. The approved measures (preferred alternatives) for these main issues were chosen and developed with the intent to minimize negative impacts to small businesses, while still achieving the overall purpose and need of the action.

In the reallocation of quota between the commercial and recreational sectors, the 3-percentage point shift to the recreational sector is more representative of how the overall fishery currently operates based on the most recent catch data. While this may have a slight negative impact on commercial businesses, it would comparably benefit recreational businesses. There were other alternatives considered for this sector reallocation, but the difference in their economic impacts were negligible. Revisions to the sector transfer measures could also further mitigate any potential negative impacts to small businesses from the sector reallocation. The amendment now allows quota (in amounts up to 10-percent of the year's acceptable biological catch) to be transferred from either sector to the other (from commercial to recreational or vice versa) during the specifications process. This management tool allows for additional flexibility and supplementation of quota to either sector in a year when the assigned allocations may not support the business needs of the sector.

Similar to the sector reallocations, the approved measures for the reallocation of commercial quota among the states is based on a recent 10 years of landings data, and is intended to be a better representation of how and where bluefish are already harvested to minimize the need for inseason state transfers. Because these alternatives do not affect the total amount of quota available in the fishery, but rather how it is distributed geographically, it is unlikely that they would have a direct economic impact on commercial businesses as a whole. However, the alternatives may have a disproportionate, indirect impact on some businesses more than others. The range of alternatives considered for how to reallocate this quota among the states did not have a difference in potential impacts when compared to the preferred alternative. To mitigate potential negative effects on entities in states that would experience the largest degree of change in commercial allocation, all changes in allocation are being phased in equally over seven years; making the difference in quota allocation that each state experiences each year much smaller (one seventh of the total), and thus minimizing the immediate magnitude of any potential negative effects as a result.

In terms of the rebuilding plan, the constant fishing mortality rebuilding plan was chosen because it contains more gradual changes to the stock with higher allowed quotas; maximizing economic stability and minimizing disruption of business operations while still rebuilding the stock within the necessary 10 years.

Overall, NMFS does not anticipate significant economic impacts on small entities as a result of implementing the measures of this amendment. While most measures have the potential to impact small businesses, these impacts are expected to largely be indirect and to have minimal direct economic effects. Public input was solicited and considered throughout the development of this amendment, and the economic impact on small businesses was minimized wherever possible, as detailed in the choices noted above.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as a small entity compliance guide was prepared and will be sent to all holders of Federal permits issued for the bluefish fishery. In addition, copies of this final rule and guide (*i.e.,* permit holder letter) are

available from NMFS at the following website: *https://www.fisheries.noaa.gov/species/bluefish#management.*

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: November 19, 2021.

Samuel D. Rauch, III,

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

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.21, revise paragraph (c)(1) and add paragraph (c)(3) to read as follows:

§ 648.21 Mid-Atlantic Fishery Management Council risk policy.

* * * * *

(c) * * *

(1) Unless otherwise allowed in paragraph (c)(2) or (3) of this section, for instances in which the application of the risk policy approaches in paragraph (b) of this section using OFL distribution results in a more restrictive ABC recommendation than the calculation of ABC derived from the use of $F_{REBUILD}$ at the MAFMC-specified overfishing risk level as outlined in paragraph (a) of this section, the Scientific and Statistical Committee (SSC) shall recommend to the MAFMC the lower of the ABC values.

* * * * *

(3) The SSC may specify higher ABCs for bluefish based on $F_{REBUILD}$, as outlined in paragraph (a) of this section, instead of the risk policy approaches in paragraph (b) of this section in order to implement a rebuilding program that would rebuild this stock by 2028.

* * * * *

■ 3. In § 648.161, revise the section heading and paragraph (a) to read as follows:

§ 648.161 Bluefish Sector ACLs and Annual Catch Targets (ACTs).

(a) *Sector ACLs and ACTs.* As a part of the bluefish specifications process, the Bluefish Monitoring Committee shall allocate a specified percentage of the fishery-level ACL to the commercial and recreational fishery sectors, and identify and review the relevant sources of sector-specific management uncertainty to recommend ACTs for each sector.

(1) *Sectors.* The sum of the commercial and recreational sector-specific ACLs shall be less than or equal to the fishery level ACL. A total of 86 percent of the fishery-level ACL will be allocated to the recreational fishery. A total of 14 percent of the fishery-level ACL will be allocated to the commercial fishery.

(2) *Management uncertainty.* The Bluefish Monitoring Committee shall recommend any reduction in catch necessary to address management uncertainty and recommend ACTs for each sector, consistent with paragraph (a) of this section, after the sector allocation described in paragraph (a)(1) of this section. The Bluefish Monitoring Committee recommendations shall identify any sector-specific sources of management uncertainty affecting the fishery, technical approaches to mitigating these sources of uncertainty, and any additional relevant information considered in the ACT recommendation and adjustment process.

(3) *Periodicity.* ACTs may be established on an annual basis for up to 3 years at a time, dependent on whether the SSC provides single or multiple-year ABC recommendations.

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■ 4. In § 648.162, revise paragraphs (b), (d), (f), and (g) to read as follows:

§ 648.162 Bluefish specifications.

* * * * *

(b) *TAL.* The Bluefish Monitoring Committee shall recommend sector-specific TALs less than or equal to the ACTs through the specifications process.

(1) *Recreational harvest limit and commercial quota.* If research quota is specified as described in paragraph (g) of this section, the recreational harvest limit and commercial quota will be based on the respective sector TALs remaining after the deduction of the applicable research quota.

(2) *Sector quota transfer.* During the specifications process, the Bluefish Monitoring Committee may recommend a transfer of quota from the commercial fishery to the recreational fishery or from the recreational fishery to the commercial fishery; based on a review and comparison of expected landings for each sector and the recreational harvest limit and commercial quota. The amount of quota transferred between sectors may not exceed 10-percent of the ABC for that fishing year. No transfer may occur when the bluefish stock is overfished or subject to overfishing.

* * * * *

(d) *Distribution of annual commercial quota.* (1) The annual commercial quota will be distributed to the states, based upon the following percentages; state each followed by its allocation in parentheses: ME (0.1091); NH (0.2154); MA (10.1150); RI (9.6079); CT (1.0872); NY (19.7582); NJ (13.8454); DE (0.4945); MD (1.9175); VA (5.8657); NC (32.0278); SC (0.1034); GA (0.1023); and FL (4.7788). Note: The sum of all state allocations does not add to 100 because of rounding. This distribution includes a minimum allocation of 0.1 to every state in the management unit.

(2) The allocation percentages in paragraph (d)(1) of this section will be phased in over a 7-year period beginning in 2022. The percent change in allocation from those prior to 2022 for each state is divided equally by seven, and will be applied incrementally each year until the final allocations listed in paragraph (d)(1) are in full effect for fishing year 2028.

* * * * *

(f) *Revision of state allocation.* Based upon any changes in the landings data available from the states for the base years 2009–2018, the Atlantic States Marine Fisheries Commission (ASMFC) and the MAFMC may recommend to the Regional Administrator that the states' shares specified in paragraph (d)(1) of this section be revised. The MAFMC's and the ASMFC's recommendation must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendation. The Regional Administrator shall review the recommendation of the ASMFC and the MAFMC. After such review, NMFS will publish a proposed rule in the **Federal Register** to implement a revision in the state shares. After considering public comment, NMFS will publish a final rule in the **Federal Register** to implement any warranted changes in allocation.

(g) *Research quota.* See § 648.22(g).

[FR Doc. 2021–25649 Filed 11–23–21; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 86, No. 224
Wednesday, November 24, 2021

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

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 866

[Docket No. FDA–2020–N–2297]

Microbiology Devices; Reclassification of Human Immunodeficiency Virus Viral Load Monitoring Tests

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed amendment; proposed order.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is proposing to reclassify human immunodeficiency virus (HIV) viral load monitoring tests, a postamendments class III device with the product code MZF, into class II (special controls), subject to premarket notification. FDA is also proposing a new device classification regulation along with special controls that the Agency believes are necessary to provide a reasonable assurance of safety and effectiveness for this device type. FDA is proposing this reclassification on its own initiative. If finalized, this order will reclassify this device type from class III (premarket approval) to class II (special controls) and reduce the regulatory burdens associated with these devices because manufacturers will no longer be required to submit a premarket approval application (PMA) for this device type but can instead submit a less burdensome premarket notification (510(k)) and receive clearance before marketing their device.

DATES: Submit either electronic or written comments on the proposed order by January 24, 2022. See section XI of this document for the proposed effective date of any final order based on this proposed order.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before January 24, 2022. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of January 24, 2022. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

Instructions: All submissions received must include the Docket No. FDA–2020–N–2297 for ''Microbiology Devices; Reclassification of Human Immunodeficiency Virus Viral Load Monitoring Tests.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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

FOR FURTHER INFORMATION CONTACT: Myrna Hanna, Center for Biologics Evaluation and Review, Food and Drug Administration, 10903 New Hampshire

Ave., Bldg. 66, Rm. 5513, Silver Spring, MD 20993–0002, 301–796–5739.

SUPPLEMENTARY INFORMATION:

I. Background—Regulatory Authorities

The Federal Food, Drug, and Cosmetic Act (FD&C Act), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Pub. L. 94–295), the Safe Medical Devices Act of 1990 (Pub. L. 101–629), the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105–115), the Medical Device User Fee and Modernization Act of 2002 (Pub. L. 107–250), the Medical Devices Technical Corrections Act (Pub. L. 108–214), the Food and Drug Administration Amendments Act of 2007 (Pub. L. 110–85), and the Food and Drug Administration Safety and Innovation Act (Pub. L. 112–144), among other amendments, establishes a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the FD&C Act (21 U.S.C. 360c) established three categories (classes) of devices, reflecting the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (general controls and special controls), and class III (general controls and premarket approval).

Section 513(a)(1) of the FD&C Act defines the three classes of devices. Class I devices are those devices for which the general controls of the FD&C Act (controls authorized by or under sections 501, 502, 510, 516, 518, 519, or 520 (21 U.S.C. 351, 352, 360, 360f, 360h, 360i, or 360j) or any combination of such sections) are sufficient to provide reasonable assurance of safety and effectiveness; or those devices for which insufficient information exists to determine that general controls are sufficient to provide reasonable assurance of safety and effectiveness or to establish special controls to provide such assurance, but because the devices are not purported or represented to be for a use in supporting or sustaining human life or for a use which is of substantial importance in preventing impairment of human health, and do not present a potential unreasonable risk of illness or injury, are to be regulated by general controls (section 513(a)(1)(A) of the FD&C Act). Class II devices are those devices for which general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness and for which there is sufficient information to establish special controls to provide such assurance, including the promulgation of performance standards, postmarket surveillance, patient registries, development and dissemination of guidelines, recommendations, and other appropriate actions the Agency deems necessary to provide such assurance (section 513(a)(1)(B) of the FD&C Act). Class III devices are those devices for which insufficient information exists to determine that general controls and special controls would provide a reasonable assurance of safety and effectiveness, and are purported or represented to be for a use in supporting or sustaining human life or for a use which is of substantial importance in preventing impairment of human health, or present a potential unreasonable risk of illness or injury (section 513(a)(1)(C) of the FD&C Act).

Devices that were not in commercial distribution prior to May 28, 1976 (generally referred to as postamendments devices) are automatically classified by section 513(f)(1) of the FD&C Act into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval unless, and until, (1) FDA reclassifies the device into class I or class II, or (2) FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the FD&C Act, to a predicate device that does not require premarket approval. FDA determines whether new devices are substantially equivalent to predicate devices by means of premarket notification procedures in section 510(k) of the FD&C Act and part 807 (21 CFR part 807), subpart E, of the regulations.

A postamendments device that has been initially classified in class III under section 513(f)(1) of the FD&C Act may be reclassified into class I or II under section 513(f)(3) of the FD&C Act. Section 513(f)(3) of the FD&C Act provides that FDA, acting by administrative order, can reclassify the device into class I or class II on its own initiative, or in response to a petition from the manufacturer or importer of the device. To change the classification of the device, the proposed new class must have sufficient regulatory controls to provide a reasonable assurance of the safety and effectiveness of the device for its intended use.

FDA relies upon ''valid scientific evidence,'' as defined in section 513(a)(3) and 21 CFR 860.7(c)(2), in the classification process to determine the level of regulation for devices. To be considered in the reclassification process, the ''valid scientific evidence'' upon which the Agency relies must be publicly available (see section 520(c) of the FD&C Act). Publicly available information excludes trade secret and/or confidential commercial information, *e.g.,* the contents of a pending PMA (see section 520(c) of the FD&C Act).

In accordance with section 513(f)(3) of the FD&C Act, the Agency is proposing to reclassify HIV viral load monitoring tests, a postamendments class III device, into class II (special controls), subject to premarket notification because the Agency believes the standard in 513(a)(1)(B) of the FD&C Act is met because there is sufficient information to establish special controls, which, in addition to general controls, will provide reasonable assurance of the safety and effectiveness of the device.[1]

Section 510(m) of the FD&C Act provides that a class II device may be exempted from the 510(k) premarket notification requirements under section 510(k) of the FD&C Act if the Agency determines that premarket notification is not necessary to reasonably assure the safety and effectiveness of the device. FDA has determined that premarket notification is necessary to reasonably assure the safety and effectiveness of HIV viral load monitoring tests. Therefore, the Agency does not intend to exempt this proposed class II device from premarket notification (510(k)) submission under section 510(m) of the FD&C Act.

II. Regulatory History of the Devices

This proposed order addresses HIV viral load monitoring tests. These are prescription tests that measure HIV RNA as an aid in monitoring patient status and are assigned product code MZF.[2] These postamendments devices are currently regulated as class III devices under section 513(f)(1) of the FD&C Act. Based on our review experience and consistent with the FD&C Act and FDA's regulations in 21 CFR 860.134, FDA believes that these devices should be reclassified from class III into class II with special controls because special controls, in addition to general controls, are necessary and sufficient to provide reasonable assurance of the safety and effectiveness of these devices and there is sufficient

[1] In December 2019, FDA began adding the term ''Proposed amendment'' to the ''ACTION'' caption for these documents, typically styled ''Proposed order'', to indicate that they ''propose to amend'' the Code of Federal Regulations. This editorial change was made in accordance with the Office of Federal Register's (OFR) interpretations of the Federal Register Act (44 U.S.C. chapter 15), its implementing regulations (1 CFR 5.9 and parts 21 and 22), and the Document Drafting Handbook.

[2] On February 21, 2020, FDA published a separate proposed order to reclassify certain HIV serological diagnostic and supplemental tests and HIV nucleic acid diagnostic and supplemental tests, which are also currently assigned product code MZF, from class III into class II (85 FR 10110).

information to establish special controls to provide such assurance.

FDA approved the first in vitro nucleic acid amplification-based HIV viral load test on June 3, 1996, for the quantitation of HIV–1 RNA in human plasma. Currently, there are six HIV viral load monitoring tests on the market, all of which met the performance criteria specified in the proposed special controls, considered necessary for the intended use of the test, when they were approved by FDA (Ref. 1).

A review of the FDA's medical device reporting database, MAUDE (Manufacturer and User Facility Device Experience), indicates a low number of reported events for HIV viral load monitoring tests. Millions of devices intended for use as HIV viral load monitoring tests have been sold since 1996 with fewer than 200 reported adverse events as of October 2020. Of these events, fewer than 10 are reported to involve injuries due to incorrect results; the remainder are malfunctions, such as user errors or incorrect results, that had no reported effect on the individual being monitored. There has been one class II recall and no class I (highest risk) recalls specific to HIV viral load monitoring tests, which, coupled with the low number of reported events, indicates a good safety record for this device class.

III. Device Description

This proposed order applies to HIV viral load monitoring tests that are prescription in vitro diagnostic devices for monitoring of HIV viral load in body fluids. As such, these prescription devices must satisfy prescription labeling requirements for in vitro diagnostic products (see 21 CFR 809.10(a)(4) and (b)(5)(ii)). HIV viral load monitoring tests are intended for use in the clinical management of individuals living with HIV and are for professional use only. These devices are not intended for use as an aid in diagnosis or for screening donors of blood or blood products or human cells, tissues, or cellular and tissue-based products (HCT/Ps).

HIV viral load monitoring tests are quantitative in vitro diagnostic tests that measure the amount of HIV RNA in human body fluids such as plasma and whole blood. The HIV RNA is isolated, amplified, and detected by labeled probes that produce a quantitative output that determines the amount of HIV in the sample. The test results then are used as part of patient management decisions in conjunction with other relevant clinical and laboratory findings.

Approval of HIV viral load monitoring tests has been based on studies and established clinical decision points that demonstrate that changes in viral load correlate with clinically meaningful outcomes, meaning that HIV RNA measurements could reliably assess the success or failure of antiretroviral therapy (ART) (Ref. 1).

IV. Proposed Reclassification

FDA is proposing to reclassify HIV viral load monitoring tests. At a public meeting held on July 19, 2018, the Blood Products Advisory Committee, convened as a medical device panel (''the Panel''), unanimously agreed that special controls, in addition to general controls, are sufficient to mitigate the risk to health from incorrect results from HIV nucleic acid and serological diagnostic and supplemental tests. The Panel believed that class II with the special controls would provide reasonable assurance of the safety and effectiveness of those devices. In February 2020, FDA issued a proposed order that, if finalized, would reclassify those devices from class III into class II (85 FR 10110). As part of the Panel's discussion, the Panel also recommended that FDA consider reclassification of quantitative HIV tests indicated for use for monitoring HIV viral load from class III to class II (Ref. 2).

In accordance with section 513(f)(3) of the FD&C Act and 21 CFR part 860, subpart C, FDA is proposing to reclassify postamendments HIV viral load monitoring tests from class III into class II. FDA believes that there are sufficient data and information available through FDA's accumulated experience with these devices and from published literature to demonstrate that the proposed special controls, along with general controls, would effectively mitigate the risks to health identified in section V of this document and provide reasonable assurance of safety and effectiveness of these devices. Absent the special controls identified in this proposed order, general controls applicable to the device are insufficient to provide reasonable assurance of the safety and effectiveness.

FDA is proposing to create a separate classification regulation for HIV viral load monitoring tests. Under this proposed order, if finalized, HIV viral load monitoring tests will be reclassified from class III to class II and identified as prescription devices. In this proposed order the Agency has proposed the special controls under section 513(a)(1)(B) of the FD&C Act that, together with general controls, would provide reasonable assurance of the safety and effectiveness of HIV viral load monitoring tests.

Section 510(m) of the FD&C Act provides that FDA may exempt a class II device from the premarket notification requirements under section 510(k) of the FD&C if FDA determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. For these HIV viral load monitoring tests, FDA has determined that premarket notification is necessary to provide a reasonable assurance of safety and effectiveness. Therefore, FDA does not intend to exempt this proposed class II device from the 510(k) requirements. If this proposed order is finalized, persons who intend to market this type of device must submit to FDA a 510(k) and receive clearance prior to marketing the device.

This proposed order, if finalized, will decrease regulatory burden on industry because manufacturers will no longer have to submit a PMA for this device type, but can instead submit a 510(k) to the Agency for review prior to marketing their device. A 510(k) is a less-burdensome pathway to market a device, which typically results in a shorter premarket review timeline compared with a PMA, helping to provide more timely access to this device type to patients. FDA expects that the reclassification of these devices would enable more manufacturers to develop HIV viral load monitoring tests such that patients would benefit from increased access to safe and effective tests.

V. Risks to Health

Viral load is one of the important markers for monitoring the effectiveness of ART and disease progression. The Department of Health and Human Services (HHS) in 2014 issued guidelines on the treatment of HIV in adults and adolescents in United States. The guidelines are updated periodically based on new data. Regarding viral load monitoring, the HHS guidelines define optimal viral load suppression as suppressing viral load levels persistently to <20 to 75 copies per milliliter (/mL) of HIV RNA, depending on the assay used (Ref. 3). Virologic failure, at which point changes in treatment are considered, is defined as the inability to achieve or maintain suppression of viral replication to an HIV RNA level <200 copies/mL (Ref. 3). The HHS guidelines recommend that viral load testing should be performed for all patients with HIV at entry into care, initiation of therapy, and on a regular basis thereafter (Ref. 3). Therefore, improving access to HIV viral

load monitoring tests is a public health priority. After considering FDA's accumulated experience with these devices from review submissions and the published literature, FDA has identified the following probable risks to health associated with HIV viral load monitoring tests:

(1) An inaccurately low viral load test result may influence patient management decisions, such as continuation of ineffective treatment, which can lead to serious injury including death. Inaccurately low viral load test results also may contribute to public health risk by leading to inadvertent transmission of the virus by an individual living with HIV. Factors that may cause decreased test sensitivity and/or increased risk of inaccurately low viral load test results include, but are not limited to, viral strain variability, acquisition of de novo mutations in genomic regions of HIV targeted by the device, and the presence of interfering substances in the sample. Inaccurately low results also can be caused by improper sample collection or sample handling, loss of sensitivity of the device, failure of detection reagents, and failure of instruments.

(2) An inaccurately high viral load test result may contribute to an unnecessary change in therapy, potentially ending effective treatment and leading to less effective management of disease, as well as significant emotional stress. Factors that may cause an increased rate of inaccurately high viral load test results include, but are not limited to, cross-reactivity with other substances in the sample, carryover, viral strain variability, or acquisition of de novo mutations in genes other than HIV. Inaccurately high results also can be caused by improper sample collection and sample contamination.

(3) Incorrect interpretation of test results by healthcare professionals may result in patient management decisions, such as continuation of ineffective therapy or an unnecessary change in therapy, that could lead to serious injury, including death, and less effective management of the disease. Incorrect interpretation of results may be caused by inadequate labeling, including insufficient limitations, warnings, and explanations of test procedure.

VI. Summary of the Reasons for Reclassification

FDA believes that HIV viral load monitoring tests should be reclassified from class III into class II (special controls) because special controls, in addition to general controls, can be established to mitigate the risks to health identified in section V and provide reasonable assurance of the safety and effectiveness of this device type. The proposed special controls are identified by FDA in section VII of this proposed order. FDA's reasons for reclassification are as follows:

(1) There is substantial scientific and medical information available regarding the nature and complexity of, and risks associated with, HIV viral load monitoring tests (Refs. 3 to 11). The safety and effectiveness of this device type has become well-established by the performance of the approved HIV viral load tests (Ref. 1).

(2) Risks associated with the failure of the device to perform as indicated (*e.g.,* inaccurately high or low test results) and risks associated with incorrect interpretation of results can be mitigated through a combination of special controls, including performance criteria, certain labeling requirements, and submission of certain manufacturing information. Performance criteria would consist primarily of analytical and method comparison study design specifications and acceptance criteria that are based on public information regarding the performance and validation of previously approved devices. FDA expects that a device would demonstrate acceptable performance, *e.g.,* analytical sensitivity, at clinically relevant medical decision points at the time of clearance. This would help ensure that devices meet or exceed the performance of other cleared or approved HIV viral load tests at existing clinically relevant medical decision points and, in the future, demonstrate similar performance if there are changes in those medical decision points that reflect additional evidence and/or medical advances. Examples of labeling mitigations include appropriate limitations, including that results should be interpreted in conjunction with the individual's clinical presentation, history, and other laboratory results. These are necessary to ensure that the devices are used correctly, and the results are interpreted appropriately, given the diversity of settings in which these devices are intended to be used. Manufacturing information required to be submitted would include summaries of strategies to quantitate new HIV types, subtypes, genotypes, and mutations to ensure the tests continue to monitor clinically relevant forms of HIV. It also would include a detailed device description, including information on number and design of primers and probes, which should be designed according to current best practices and professional recommendations. It would also include appropriate and acceptable procedures to determine the severity of events to ensure appropriate adverse event reporting, protocols for assessing stability, and evaluation of test performance at the extremes of specifications to ensure the tests have been validated to function correctly under diverse conditions.

Taking into account the established health benefits of the use of the device and the nature of the probable risks of the device (Refs. 1, 3 to 11), FDA, on its own initiative, is proposing to reclassify these postamendments devices from class III into class II. FDA believes that, when used as indicated, HIV viral load monitoring tests can provide significant benefits to clinicians and patients.

VII. Proposed Special Controls

FDA believes that these devices can be classified into class II with the establishment of special controls. FDA believes that these special controls, in addition to general controls, will provide a reasonable assurance of the safety and efficacy of these devices. Table 1 demonstrates how these proposed special controls will mitigate each of the identified risks to health in section V.

TABLE 1—RISKS TO HEALTH AND MITIGATION MEASURES FOR HIV VIRAL LOAD MONITORING TESTS

Identified risks to health	Mitigation measures
An inaccurately low test result may influence patient management decisions, including continuation of ineffective antiviral therapy which can lead to serious injury including death. An inaccurately low test result may contribute to public health risk by leading to inadvertent transmission of the virus by a person living with HIV.	Certain labeling limitations, warnings, and explanations of the procedures and interpretation results. Analytical sensitivity and method comparison study performance criteria. Acceptable strategies for monitoring emergence of and ability of the test to detect new or altered circulating forms of HIV. Certain other device verification and validation information, including acceptable processes for risk analysis, testing performance at extremes of specifications, and determining severity of adverse events and malfunctions.
An inaccurately high test result may contribute to unnecessary change in therapy, potentially disrupting effective treatment and leading to less effective management of disease, as well as significant emotional stress.	Labeling instructions for appropriate confirmation of elevated results. Analytical performance criteria. Acceptable validation of susceptibility to interference and cross-reactivity. Acceptable processes for risk analysis, testing performance at extremes of specifications, and determining severity of adverse events and malfunctions.
Incorrect interpretation of test results may result in patient management decisions, such as continuation of ineffective therapy or an unnecessary change in therapy, that could lead to serious injury, including death, and less effective management of the disease.	Certain labeling limitations, warnings, and explanations of the procedures and interpretation results.

If this proposed order is finalized, HIV viral load monitoring tests will be reclassified into class II (special controls). As discussed below, the reclassification will be codified in 21 CFR 866.3958. Firms submitting a 510(k) for an HIV viral load monitoring test will be required to comply with the particular mitigation measures set forth in the special controls. Adherence to the special controls, in addition to the general controls, is necessary to provide a reasonable assurance of the safety and effectiveness of the devices.

VIII. Analysis of Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IX. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed order contains no new collection of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required. This proposed order refers to previously approved FDA collections of information. These collections of information are subject to review by the OMB under the PRA. The collections of information in part 807, subpart E, regarding premarket notification submissions have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 820 have been approved under OMB control number 0910–0073; the collections of information in 21 CFR part 803 have been approved under OMB control number 0910–0437; and the collections of information in 21 CFR parts 801 and 809 have been approved under OMB control number 0910–0485.

X. Codification of Orders

Under section 513(f)(3) of the FD&C Act, FDA may issue final orders to reclassify devices. FDA will continue to codify classifications and reclassifications in the Code of Federal Regulations (CFR). Changes resulting from final orders will appear in the CFR as newly codified orders. Therefore, under section 513(f)(3), in the proposed order, we are proposing to codify HIV viral load monitoring tests in the new 21 CFR 866.3958, under which HIV viral load monitoring tests would be reclassified from class III to class II.

XI. Proposed Effective Date

FDA proposes that any final order based on this proposed order become effective 30 days after its date of publication in the **Federal Register**.

XII. References

The following references are on display at the Dockets Management Staff (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at *https://www.regulations.gov*. FDA has verified the website addresses, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

1. List of approved HIV viral load monitoring tests with supporting information can be found at *https://www.fda.gov/vaccines-blood-biologics/approved-blood-products/premarket-approvals-and-humanitarian-device-exemptions-supporting-documents.*
2. ''Reclassification of HIV Point of Care and Laboratory-based serological and NAT diagnostic devices from Class III (PMA) to Class II 510(k); Issue Summary Prepared for the July 19, 2018, Meeting of the Blood Products Advisory Committee (BPAC)).'' Available at: *https://www.fda.gov/advisory-committees/blood-products-advisory-committee/2018-meeting-materials-blood-products-advisory-committee.*
3. ''Guidelines for the Use of Antiretroviral Agents in Adults and Adolescents Living with HIV.'' Department of Health and Human Services. Accessed November 24, 2020. Available at: *https://clinicalinfo.hiv.gov/en/guidelines/adult-and-adolescent-arv/antiretroviral-therapy-prevent-sexual-transmission-hiv.*
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List of Subjects in 21 CFR Part 866

Biologics, Laboratories, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act it is proposed that 21 CFR part 866 be amended as follows:

PART 866—IMMUNOLOGY AND MICROBIOLOGY DEVICES

■ 1. The authority citation for part 866 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

■ 2. Add § 866.3958 to subpart D to read as follows:

§ 866.3958 Human immunodeficiency virus (HIV) viral load monitoring test.

(a) *Identification.* A human immunodeficiency virus (HIV) viral load monitoring test is an in vitro diagnostic prescription device for the quantitation of the amount of HIV RNA in human body fluids. The test is intended for use in the clinical management of individuals living with HIV and is for professional use only. The test results are intended to be interpreted in conjunction with other relevant clinical and laboratory findings. The test is not intended to be used as an aid in diagnosis or for screening donors of blood or blood products or human cells, tissues, or cellular and tissue-based products (HCT/Ps).

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) The labeling must include:

(i) An intended use that states that the device is not intended for use as an aid in diagnosis or for use in screening donors of blood or blood products, or HCT/Ps.

(ii) A detailed explanation of the principles of operation and procedures used for assay performance.

(iii) A detailed explanation of the interpretation of results and recommended actions to take based on current clinical guidelines.

(iv) Limitations, which must be updated to reflect current clinical practice and patient management. The limitations must include, but are not limited to, statements that indicate:

(A) The matrices and sample types with which the device has been cleared and that use of this test with specimen types other than those specifically cleared for this device may cause inaccurate test results.

(B) Mutations in highly conserved regions may affect binding of primers and/or probes resulting in the under-quantitation of virus or failure to detect the presence of virus.

(C) All test results should be interpreted in conjunction with the individual's clinical presentation, history, and other laboratory results.

(2) Device verification and validation must include:

(i) Detailed device description, including the device components, ancillary reagents required but not provided, and an explanation of the device methodology. Additional information appropriate to the technology must be included, such as detailed information on the design of primers and probes.

(ii) For devices with assay calibrators, the design and nature of all primary, secondary, and subsequent quantitation standards used for calibration as well as their traceability to a reference material. In addition, analytical testing must be performed following the release of a new lot of the standard material that was used for device clearance, or when there is a transition to a new calibration standard.

(iii) Detailed documentation of analytical performance studies conducted as appropriate to the technology, specimen types tested, and intended use of the device, including but not limited to, limit of blank, limit of detection, limit of quantitation, cutoff determination, precision, linearity, endogenous and exogenous interferences, cross-reactivity, carry-over, quality control, matrix equivalency, sample and reagent stability. Samples selected for use in analytical studies or used to prepare samples for use in analytical studies must be from subjects with clinically relevant genotypes circulating in the United States.

(iv) Multisite reproducibility study that includes the testing of three independent production lots.

(v) Analytical sensitivity of the device must demonstrate acceptable performance at current clinically relevant medical decision points. Samples tested to demonstrate analytical sensitivity must include appropriate numbers and types of samples, including real clinical samples near the lower limit of quantitation and any clinically relevant medical decision points. Analytical specificity of the device must demonstrate acceptable performance. Samples tested to demonstrate analytical specificity must include appropriate numbers and types of samples from patients with different underlying illnesses and infection and from patients with potential interfering substances.

(vi) Detailed documentation of performance from a multisite clinical study or a multisite analytical method comparison study.

(A) For devices evaluated in a multisite clinical study, the study must use specimens from individuals living with HIV being monitored for changes in viral load, and the test results must be compared to the clinical status of the patients.

(B) For tests evaluated in a multisite analytical method comparison study, the performance of the test must be compared to an FDA-cleared or approved comparator. The multisite method comparison study must include appropriate numbers and types of samples with analyte concentrations across the measuring range of the assay, representing clinically relevant genotypes. The multisite method comparison study design, including number of samples tested, must be sufficient to meet the following criteria:

(*1*) Agreement between the two tests across the measuring range of the assays must have an r2 of greater than or equal to 0.95.

(*2*) The bias between the test and comparator assay, as determined by difference plots, must be less than or equal to 0.5 log copies/mL.

(vii) If a multisite clinical study is performed under paragraph (b)(2)(vi) of this section, detailed documentation of a single-site analytical method comparison study between the device and an FDA-cleared or approved comparator. The analytical method comparison study must use appropriate numbers and types of samples with analyte concentrations across the measuring range of the assay, representing clinically relevant genotypes. The results must meet the criteria in paragraphs (b)(2)(vi)(B)(*1*) and (*2*) of this section.

(viii) Strategies for detection of new strains, types, subtypes, genotypes, and genetic mutations as they emerge.

(ix) Risk analysis and management strategies, such as Failure Modes Effects Analysis and/or Hazard Analysis and Critical Control Points summaries and their impact on test performance.

(x) Final release criteria to be used for manufactured device lots with an appropriate justification that lots released at the extremes of the specifications will meet the claimed analytical and clinical performance characteristics as well as the stability claims.

(xi) All stability protocols, including acceptance criteria.

(xii) Appropriate and acceptable procedure(s) for addressing complaints and other device information that determines when to submit a medical device report.

(xiii) Premarket notification submissions must include the information contained in paragraphs (b)(2)(i) through (xii) of this section.

Dated: November 16, 2021.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2021–25372 Filed 11–23–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2021–0778]

RIN 1625–AA09

Drawbridge Operation Regulation; Willamette River, Portland, OR

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to modify the operating schedule that governs the Morrison Bridge across the Willamette River, mile 12.8, at Portland, OR. Multnomah County, Oregon, the bridge owner, is requesting to change the current regulation to allow painting and preservation of the Morrison Bridge including the double bascule span. The modified rule would change from a full span opening to a single leaf, half opening, and operation. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must reach the Coast Guard on or before December 27, 2021. The Coast Guard anticipates that this proposed rule will be effective from 7 p.m. on April 1, 2022, through 7 p.m. on May 31, 2023.

ADDRESSES: You may submit comments identified by docket number USCG–2021–0778 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.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Steven Fischer, Thirteenth District Bridge Administrator, U.S. Coast Guard; telephone 206–220–7282, email *d13-smb-d13-bridges@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
OMB Office of Management and Budget
NPRM Notice of proposed rulemaking (Advance, Supplemental)
§ Section
U.S.C. United States Code
County Multnomah County

II. Background, Purpose and Legal Basis

Multnomah County, Oregon, owns and operates the Morrison Bridge across the Willamette River at mile 12.8. The County is requesting a temporary change to the existing operating regulation. The County is proposing to open the Morrison Bridge's span in single leaf mode, half of the double bascule span, to marine vessels with a minimum of two-hour notice, or four-hour notice if a tug assist is needed. The County needs to maintain half of the draw closed to allow for preservation and paint efforts. The proposed regulation change would allow the Morrison Bridge to alternate operation of the east or west leaf span from April 1, 2022, through May 31, 2023. The west span will be operational at the beginning of construction and the east span will be closed to navigation. The dates to switch operational spans will be determined later and published in the Local and Broadcast Notice to Mariners. This proposal also allows a containment system under the bridge that reduces the non-opening half of the bridge's vertical clearance by 5 feet from 69 feet center to 64 feet, and from 48 feet on the sides to 43 feet above the Columbia River Datum 0.0. Marine traffic on this section of the Willamette River consists of vessels ranging from small pleasure craft up to large commercial vessels and barges. The subject bridge currently operates in accordance with 33 CFR 117.897(c)(3)(iv).

III. Discussion of Proposed Rule

The Coast Guard proposes a temporary change to 33 CFR 117.897(c)(3)(iv) to be in effect from 7 p.m. on 1 April, 2022, through 7 p.m. on 31 May, 2023. This temporary rule will suspend the current regulatory cite regarding the Morrison Bridge, and add a temporary 33 CFR 117.897(c)(3)(vi) which will amend the operating schedule of the Morrison Bridge by requiring a two-hour notice, or four-hour notice with tug assist, for all draw openings, and alternate the operation of the double bascule spans to single span which will reduce the horizontal clearances of the bridge. The temporary rule is necessary to accommodate preservation and painting of the Morrison Bridge. This bridge provides a vertical clearance approximately 69 feet, at the center, above Columbia River Datum 0.0 when in the closed-to-navigation position. One half of the bascule bridge will have a containment system installed on the non-opening half of the span, which will reduce the vertical clearance by 5 feet to 64 feet center and 43 feet on the sides. A tug will be available for assists to mariners as needed when a request is given with a notice of four hours for an opening. The horizontal clearance with a full opening is 185 feet, therefore, in single leaf operations, a temporary rule change will reduced the horizontal clearance to approximately 90 feet. Vessels able to transit under the Morrison Bridge without an opening may do so at any time. Marine vessels are advised to be aware of fall hazards. This section of the Willamette River has no alternate routes. During the Portland Rose Festival, both leafs of the double bascule span will be fully operational. If any mariner submits a full opening request to the County prior to construction beginning, a full opening can be scheduled. All marine emergency vessels can navigate under the Morrison Bridge without an opening, and therefore do not need to contact the Hawthorne Bridge for an emergency opening.

This regulatory action determination is based on the ability of the Morrison Bridge to open on signal after the Hawthorne Bridge, at Willamette River mile 13.1, has received at least a two-hour notice, or four-hour notice for tug assist, by telephone at 503–988–3452 or VHF radio request. The Coast Guard has made this finding based on the fact that the proposed change allows any vessel needing a drawbridge opening to transit through the Morrison Bridge after providing adequate notice and being provided with tug assistance if required.

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 and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This 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 advance 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, Table3–1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

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–2021–0778 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. 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 Department of Homeland Security Delegation No. 0170.1.

■ 2. In § 117.897, stay paragraph (c)(3)(iv) and add paragraph (c)(3)(vi) to read as follows.

§ 117.897 Willamette River.

* * * * *

(c) * * *

(3) * * *

(vi) Morrison Bridge, Portland, mile 12.8, will operate a single leaf opening, on signal after the Hawthorne Bridge, at Willamette River mile 13.1, has received, at least a two-hour advance notice, or four-hour advance notice for tug assist, to open by telephone at 503–988–3452 or VHF radio.

Dated: November 18, 2021.

M.W. Bouboulis,

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

[FR Doc. 2021–25638 Filed 11–23–21; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–R06–OAR–2021–0661; FRL–9262–01–R6]

National Emission Standards for Hazardous Air Pollutants; Delegation of Authority to Arkansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Arkansas Department of Energy and Environment, Division of Environmental Quality (DEQ) has submitted a request to update the delegation and approval of its program for the implementation and enforcement of certain National Emission Standards for Hazardous Air Pollutants (NESHAP) promulgated under the Clean Air Act (CAA), as provided for under the delegation mechanism previously approved by the Environmental Protection Agency (EPA). The EPA is proposing to approve DEQ's requested update of its NESHAP delegation. If finalized as proposed, the delegation will only encompass sources subject to one or more Federal section 112 standards which are also subject to the requirements of the Title V operating permits program.

DATES: Written comments on this proposed rule must be received on or before December 27, 2021.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R06–OAR–2021–0661, at *https://www.regulations.gov* or via email to *barrett.richard@epa.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *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, please contact Rick Barrett, 214–665–7227, *barrett.richard@epa.gov.* For 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: The index to the docket for this action is available electronically at *https://www.regulations.gov.* While all documents in the docket are listed in the index, some information may not be publicly available due to docket file size restrictions or content (*e.g.,* CBI).

FOR FURTHER INFORMATION CONTACT: Rick Barrett, EPA Region 6 Office, ARPE, (214) 665–7227, *barrett.richard@epa.gov.* Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office will be closed to the public to reduce the risk of transmitting COVID–19. We encourage the public to submit comments via *https://www.regulations.gov,* as there will be a delay in processing mail and no courier or hand deliveries will be accepted. Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

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

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I. What does this action do?

The EPA is proposing to approve an update to the delegation of the implementation and enforcement of certain NESHAP to DEQ. If finalized, the delegation will provide DEQ with the primary responsibility to implement and enforce the delegated standards. See sections VI and VII, below, for a discussion of which standards are being delegated and which are not being delegated.

II. What is the authority for delegation?

Section 112(l) of the CAA and 40 CFR part 63, subpart E, authorize the EPA to delegate authority for the implementation and enforcement of NESHAP to a State or local agency that satisfies the statutory and regulatory requirements in subpart E. The NESHAP are codified at 40 CFR parts 61 and 63. This action regards the standards in 40 CFR part 63 only.

III. What criteria must Arkansas's program meet to be approved?

Section 112(l)(5) of the CAA requires the EPA to disapprove any program submitted by a State for the delegation of NESHAP if the EPA determines that:

(A) The authorities contained in the program are not adequate to assure compliance by the sources within the state with respect to each applicable standard, regulation, or requirement established under section 112;

(B) adequate authority does not exist, or adequate resources are not available, to implement the program;

(C) the schedule for implementing the program and assuring compliance by affected sources is not sufficiently expeditious; or

(D) the program is otherwise not in compliance with the guidance issued by the EPA under section 112(l)(2) or is not likely to satisfy, in whole or in part, the objectives of the CAA.

In carrying out its responsibilities under section 112(l), the EPA promulgated regulations at 40 CFR part 63, subpart E setting forth criteria for the approval of submitted programs. For example, in order to obtain approval of a program to implement and enforce Federal section 112 rules as promulgated without changes (straight delegation), a state must demonstrate that it meets the criteria of 40 CFR 63.91(d). 40 CFR 63.91(d)(3) provides that interim or final Title V program approval will satisfy the criteria of 40 CFR 63.91(d).[1] The NESHAP delegation for Arkansas, as it applies to Title V sources, was most recently approved on November 12, 2014 (79 FR 67073).

IV. How did DEQ meet the NESHAP program approval criteria?

The EPA granted final interim approval for the Arkansas Operating Permit Program under part 70 in a rulemaking published September 8, 1995. 60 FR 46771. In the **Federal Register** notice proposing interim approval of the Arkansas Operating Permit Program, the EPA discussed the delegation of unchanged part 63 standards as they apply to part 70 sources and noted that Arkansas plans to use the mechanism of incorporation by reference to adopt unchanged part 63 standards into its regulations. *See* 59 FR 47828, 47830 (September 19, 1994). In an October 9, 2001, rulemaking, the EPA took final action to fully approve the Arkansas Operating Permit Program. 66 FR 51312. In accordance with 40 CFR 63.91(d), the up-front approval criteria for delegation of unchanged part 63 standards as requested by DEQ have been met. However, the EPA's October 9, 2001, **Federal Register** notice failed to discuss the *mechanism* associated with delegation of the part 63 standards for sources subject to the part 70 program. As discussed above, sources subject to the part 70 program are those sources that are operating pursuant to a part 70 permit issued by the State, local agency, or the EPA. Sources not subject to the part 70 program are those sources that are not required to obtain a part 70 permit from either the State, local agency, or the EPA (see 40 CFR 70.3); *e.g.,* exempted area sources. As stated above, the CAA section 112(l) requirements for approval of the Arkansas program for straight delegation were satisfied when the EPA granted approval of the Arkansas Operating Permit Program. The EPA's approval also met the up-front criteria set forth in 40 CFR 63.91(d).

However, since DEQ implements and enforces unchanged part 63 standards (''straight delegation'') through its EPA-approved Title V Operating Permit Program, there were several issues which needed to be separately addressed and resolved in order to ensure the requirements for delegation under CAA section 112(l) and 40 CFR part 63, subpart E were met. *See also* 65 FR 55813 (September 14, 2000). The EPA believes all such issues were addressed in the Memorandum of Agreement (MOA), dated September 17, 2014, executed by the State and the EPA, a copy of which has been included in the docket for this rulemaking. DEQ implements and enforces part 63 standards applicable to Title V sources required to obtain a part 70 permit by including the applicable part 63 standards in Title V operating permits, in accordance with the procedures set forth in the MOA. The permit must be effective prior to the first substantial compliance date for all future new and revised part 63 standards, unless DEQ has notified the EPA in advance that it does not intend to accept delegation for implementation or enforcement, as discussed in the MOA referenced above. Adequate resources will be obtained through monies from the State's Title V program that can be used to fund acceptable Title V activities. Upon promulgation of a new or revised part 63 standard, DEQ will immediately begin activities necessary for timely implementation of the standard. These activities will involve identifying sources subject to the applicable requirements and notifying these sources of the applicable requirements. Nothing in the Arkansas program for straight delegation is contrary to Federal guidance.

Under 40 CFR 63.91(a), once a state has satisfied the up-front approval criteria, it needs only to reference the previous demonstration and reaffirm that it still meets the criteria for any subsequent submittals for delegation of the section 112 standards. As stated in its October 27, 2021, supplemental letter, DEQ has affirmed that it still meets the up-front approval criteria and referenced the previous demonstration.

V. How are sources subject to certain listed standards going to be handled since DEQ did not accept delegation of these standards?

In its June 7, 2010, request for delegation of authority and approval of the mechanism used to implement and enforce the delegated part 63 standards, Arkansas noted that it was not requesting delegation of part 63 standards for area sources not required to obtain a Title V (part 70) permit. Arkansas also noted that it was not requesting delegation of the accidental release requirements under CAA section 112(r). Since DEQ is not accepting delegation of these standards, the EPA will be the primary enforcement authority for those standards. However, these undelegated part 63 standards remain requirements of the sources subject to these standards; therefore, DEQ must ensure that the applicable part 63 standards are included in the appropriate federally enforceable permit for subject sources, and sources subject to these standards must continue to comply with their requirements.

VI. What is being delegated?

By letter dated September 28, 2020, and supplemental letters dated June 29, 2021, and October 27, 2021, the EPA received requests from DEQ to update its existing NESHAP delegation. With certain exceptions noted in section VII of this document, DEQ's request includes certain NESHAP promulgated

[1] Some NESHAP do not require a source to obtain a Title V permit (*e.g.,* certain area sources that are exempt from the requirement to obtain a Title V permit). For these non-Title V sources, the EPA believes that the State must assure the EPA that it can implement and enforce the NESHAP for such sources. *See* 65 FR 55810, 55813 (September 14, 2000).

by the EPA at 40 CFR part 63, as amended between September 17, 2014, and July 31, 2020. More specifically, DEQ is requesting to update its delegation and approval to implement and enforce 40 CFR part 63 standards as they apply to part 70 major sources, and only to those area sources subject to the Title V (part 70) permitting requirements.

VII. What is not being delegated?

DEQ has not requested, nor would this rulemaking if approved as proposed, delegate the enforcement and implementation of 40 CFR part 63 standards to DEQ that would apply to area sources which do not require a Title V (part 70) permit. In addition, the EPA regulations provide that we cannot delegate to a State any of the Category II Subpart A authorities set forth in 40 CFR 63.91(g)(2). These include the following provisions: § 63.6(g), Approval of Alternative Non-Opacity Standards; § 63.6(h)(9), Approval of Alternative Opacity Standards; § 63.7(e)(2)(ii) and (f), Approval of Major Alternatives to Test Methods; § 63.8(f), Approval of Major Alternatives to Monitoring; and § 63.10(f), Approval of Major Alternatives to Recordkeeping and Reporting. In addition, some part 63 standards have certain provisions that cannot be delegated to the states. Furthermore, no authorities are being proposed for delegation that require rulemaking in the **Federal Register** to implement, or where Federal overview is the only way to ensure national consistency in the application of the standards or requirements of CAA section 112. Finally, CAA section 112(r), the accidental release program authority, is not being proposed for delegation by this action.

If this action is finalized as proposed, all of the inquiries and requests concerning implementation and enforcement of the excluded standards in the State of Arkansas should be directed to the EPA Region 6 Office.

The EPA is proposing a determination that the NESHAP program submitted by Arkansas meets the applicable requirements of CAA section 112(l)(5) and 40 CFR part 63, subpart E.

VIII. How will statutory and regulatory interpretations be made?

If this NESHAP delegation update is finalized as proposed, the DEQ will obtain concurrence from the EPA on any matter involving the interpretation of section 112 of the Clean Air Act or 40 CFR part 63 to the extent that implementation, administration, or enforcement of those provisions are not covered by prior EPA determinations or guidance.

IX. What information must DEQ provide to the EPA?

DEQ must provide any additional compliance related information to the EPA, Region 6, Office of Enforcement and Compliance Assurance within 45 days of a request under 40 CFR 63.96(a). In receiving delegation for specific General Provisions authorities, DEQ must submit to EPA Region 6, on a semi-annual basis, copies of determinations issued under these authorities. *See* 40 CFR 63.91(g)(1)(ii). For part 63 standards, these determinations include: Section 63.1, Applicability Determinations; Section 63.6(e), Operation and Maintenance Requirements—Responsibility for Determining Compliance; Section 63.6(f), Compliance with Non-Opacity Standards—Responsibility for Determining Compliance; Section 63.6(h), Compliance with Opacity and Visible Emissions Standards—Responsibility for Determining Compliance; Sections 63.7(c)(2)(i) and (d), Approval of Site-Specific Test Plans; Section 63.7(e)(2)(i), Approval of Minor Alternatives to Test Methods; Section 63.7(e)(2)(ii) and (f), Approval of Intermediate Alternatives to Test Methods; Section 63.7(e)(iii), Approval of Shorter Sampling Times and Volumes When Necessitated by Process Variables or Other Factors; Sections 63.7(e)(2)(iv), (h)(2), and (h)(3), Waiver of Performance Testing; Sections 63.8(c)(1) and (e)(1), Approval of Site-Specific Performance Evaluation (Monitoring) Test Plans; Section 63.8(f), Approval of Minor Alternatives to Monitoring; Section 63.8(f), Approval of Intermediate Alternatives to Monitoring; Section 63.9 and 63.10, Approval of Adjustments to Time Periods for Submitting Reports; Section 63.10(f), Approval of Minor Alternatives to Recordkeeping and Reporting; and Section 63.7(a)(4), Extension of Performance Test Deadline.

X. What authority does the EPA have?

We retain the right, as provided by CAA section 112(l)(7) and 40 CFR 63.90(d)(2), to enforce any applicable emission standard or requirement under section 112. In addition, the EPA may enforce any federally approved State rule, requirement, or program under 40 CFR 63.90(e) and 63.91(c)(1)(i). The EPA also has the authority to make certain decisions under the General Provisions (subpart A) of part 63. We are proposing to delegate to the DEQ some of these authorities, and retain others, as explained in sections VI and VII above. In addition, the EPA may review and disapprove State determinations and subsequently require corrections. *See* 40 CFR 63.91(g)(1)(ii). EPA also has the authority to review DEQ's implementation and enforcement of approved rules or programs and to withdraw approval if we find inadequate implementation or enforcement. *See* 40 CFR 63.96.

Furthermore, we retain the authority in an individual emission standard that may not be delegated according to provisions of the standard. Finally, we retain the authorities stated in the. October 9, 2001, rulemaking, where the EPA took final action to fully approve the Arkansas Operating Permit Program. *See* 66 FR 51312.

The updated 40 CFR part 63 standards being requested by DEQ are discussed in their request letter and supplemental letters to EPA, as noted in section VI above. A copy of each of these three letters is included in the docket for this action. A table of the updated NESHAP standards being requested may be found in the docket for this action. The table also shows the authorities that cannot be delegated to any state or local agency.

XI. Should sources submit notices to the EPA or DEQ?

For the delegated part 63 standards and authorities covered by this proposed action, if finalized, sources would submit all of the information required pursuant to the general provisions and the relevant subpart(s) of the delegated NESHAP (40 CFR part 63) directly via electronic submittal to online EPA database portals that are specified in each rule, and also as paper submittals to the ADEQ at the following address: The Arkansas Department of Energy and Environment, Division of Environmental Quality, 5301 Northshore Drive, North Little Rock, Arkansas 72118–5317. The DEQ is the primary point of contact with respect to the delegated NESHAP. The EPA Region 6 proposes to waive the requirement that courtesy notifications and reports for delegated standards be submitted to the EPA in addition to DEQ in accordance with 40 CFR 63.9(a)(4)(ii) and 63.10(a)(4)(ii).[2] For those standards and authorities not delegated as discussed above, sources must continue to submit all appropriate information to the EPA.

[2] This waiver only extends to the submission of *copies* of notifications and reports; EPA does not waive the requirements in delegated standards that require notifications and reports be submitted to an electronic database (*e.g.,* 40 CFR part 63, subpart HHHHHHH).

XII. How will unchanged authorities be delegated to DEQ in the future?

Consistent with the EPA regulations and guidance,[3] if this NESHAP delegation update is finalized as proposed, DEQ will only need to periodically submit a written request to EPA, Region 6, to update its approval of the delegation of authority to implement and enforce new or revised part 63 standards through its approved Title V permitting program. In such request, DEQ will reference the previous up-front approval demonstration, reaffirm that it still meets the up-front approval criteria, and identify the new or revised part 63 standards that will be delegated upon incorporation into Title V permits.

The EPA will respond in writing to the request and take action in the **Federal Register** to inform the public and affected sources of the EPA's decision, indicate where source notifications and reports should be sent, and to update 40 CFR 63.99(a)(4), amending the Arkansas table of delegated part 63 standards being implemented and enforced by DEQ.

XIII. Proposed Action

In this action, because DEQ's request meets all requirements of CAA section 112(l) and 40 CFR 63.91, the EPA is proposing to approve their request for the updated delegation and the continued approval of the mechanism used to implement and enforce certain part 63 standards applicable to sources required to obtain a Title V (part 70) permit, as they existed though July 31, 2020.

As for the part 63 standards which have not yet been incorporated into permits, DEQ's authority to implement and enforce new and revised part 63 standards under this delegation becomes effective when this proposed action is finalized and after the issuance of the appropriate federally enforceable permit containing those standards. DEQ's authority to implement and enforce new and revised part 63 standards under this delegation will become effective according to the procedures outlined in the MOA, a copy of which is included in the docket for this rulemaking.

Nothing in this action should be construed as permitting, allowing, or establishing a precedent for any future request for revision to the approved delegation. Each request for revision to the approved delegation shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

XIV. Statutory and Executive Order Reviews

Under the CAA, the Administrator has the authority to approve section 112(l) submissions that comply with the provisions of the Act and applicable Federal regulations. In reviewing section 112(l) submissions, the EPA's role is to approve state choices, provided that they meet the criteria and objectives of the CAA and of the EPA's implementing regulations. Accordingly, this proposed action would merely approve the State's request as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

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

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

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

Dated: November 17, 2021.

David Garcia,

Director, Air & Radiation Division, Region 6.

[FR Doc. 2021–25626 Filed 11–23–21; 8:45 am]

BILLING CODE 6560–50–P

[3] *See* Hazardous Air Pollutants: Amendments to the Approval of State Programs and Delegation of Federal Authorities, Final Rule (65 FR 55810, September 14, 2000); and ''Straight Delegation Issues Concerning Sections 111 and 112 Requirements and Title V,'' by John S. Seitz, Director of Air Quality Planning and Standards, EPA, dated December 10, 1993.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[EPA–HQ–OPPT–2021–0030; FRL–8805–01–OCSPP]

RIN 2070–AB27

Significant New Use Rules on Certain Chemical Substances (21–2.5e)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing significant new use rules (SNURs) under the Toxic Substances Control Act (TSCA) for chemical substances that were the subject of premanufacture notices (PMNs) and are also subject to Orders issued by EPA pursuant to TSCA. The SNURs require persons who intend to manufacture (defined by statute to include import) or process any of these chemical substances for an activity that is proposed as a significant new use by this rule to notify EPA at least 90 days before commencing that activity. The required notification initiates EPA's evaluation of the use, under the conditions of use for that chemical substance, within the applicable review period. Persons may not commence manufacture or processing for the significant new use until EPA has conducted a review of the notice, made an appropriate determination on the notice, and has taken such actions as are required by that determination.

DATES: Comments must be received on or before December 27, 2021.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2021–0030, through the Federal eRulemaking Portal at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI)

or other information whose disclosure is restricted by statute.

Due to the public health concerns related to COVID–19, the EPA Docket Center (EPA/DC) and Reading Room is closed to visitors with limited exceptions. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* William Wysong, New Chemicals Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–4163; email address: *wysong.william@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you manufacture, process, or use the chemical substances contained in this proposed rule. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Manufacturers or processors of one or more subject chemical substances (NAICS codes 325 and 324110), *e.g.,* chemical manufacturing and petroleum refineries.

This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA. Chemical importers are subject to the TSCA section 13 (15 U.S.C. 2612) import provisions promulgated at 19 CFR 12.118 through 12.127 and 19 CFR 127.28. Chemical importers must certify that the shipment of the chemical substance complies with all applicable rules and Orders under TSCA, which would include the SNUR requirements should these proposed rules be finalized. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, pursuant to 40 CFR 721.20, any persons who export or intend to export a chemical substance that is the subject of this proposed rule on or after December 27, 2021 are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)) (see 40 CFR 721.20), and must comply with the export notification requirements in 40 CFR part 707, subpart D.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *https://www.epa.gov/dockets/commenting-epa-dockets.*

II. Background

A. What action is the Agency taking?

EPA is proposing these SNURs under TSCA section 5(a)(2) (15 U.S.C. 2604(a)(2)) for certain chemical substances that were the subject of PMNs. These proposed SNURs would require persons to notify EPA at least 90 days before commencing the manufacture or processing of any of these chemical substances for an activity proposed as a significant new use. Receipt of such notices would allow EPA to assess risks and, if appropriate, to regulate the significant new use before it may occur.

The docket for these proposed SNURs, identified as docket ID number EPA–HQ–OPPT–2021–0030, includes information considered by the Agency in developing these proposed SNURs.

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

TSCA section 5(a)(2) (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including the four TSCA section 5(a)(2) factors listed in Unit III.

C. Applicability of General Provisions

General provisions for SNURs appear in 40 CFR part 721, subpart A. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the rule. Provisions relating to user fees appear at 40 CFR part 700. Pursuant to 40 CFR 721.1(c), persons subject to these SNURs must comply with the same significant new use notice (SNUN) requirements and EPA regulatory procedures as submitters of PMNs under TSCA section 5(a)(1)(A). These requirements include the information submission requirements of TSCA sections 5(b) and 5(d)(1), the exemptions authorized by TSCA sections 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUN and before the manufacture or processing for the significant new use can commence, EPA must either determine that the use is not likely to present an unreasonable risk of injury under the conditions of use for the chemical substance or take such regulatory action as is associated with an alternative determination. If EPA determines that the use is not likely to present an unreasonable risk, EPA is required under TSCA section 5(g) to make public, and submit for publication in the **Federal Register**, a statement of EPA's findings.

III. Significant New Use Determination

TSCA section 5(a)(2) states that EPA's determination that a use of a chemical substance is a significant new use must be made after consideration of all relevant factors, including:

- The projected volume of manufacturing and processing of a chemical substance.
- The extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance.
- The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.
- The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

In determining what would constitute a significant new use for the chemical substances that are the subject of these SNURs, EPA considered relevant information about the toxicity of the chemical substances, potential human exposures and environmental releases that may be associated with possible uses of these chemical substances, in

the context of the four TSCA section 5(a)(2) factors listed in this unit.

The proposed rules include PMN substances that are subject to Orders issued under TSCA section 5(e)(1)(A), as required by the determinations made under TSCA section 5(a)(3)(B). The TSCA Orders require protective measures to limit exposures or otherwise mitigate the potential unreasonable risk. The proposed SNURs identify significant new uses as any manufacturing, processing, use, distribution in commerce, or disposal that does not conform to the restrictions imposed by the underlying TSCA Orders, consistent with TSCA section 5(f)(4).

Where EPA determined that the PMN substance may present an unreasonable risk of injury to human health via inhalation exposure, the underlying TSCA Order usually requires that potentially exposed employees wear specified respirators unless actual measurements of the workplace air show that air-borne concentrations of the PMN substance are below a New Chemical Exposure Limit (NCEL), and includes requirements addressing performance criteria for sampling and analytical methods, periodic monitoring, respiratory protection, and recordkeeping. No comparable NCEL provisions currently exist in 40 CFR part 721, subpart B, for SNURs. Therefore, for these cases, the individual SNURs in 40 CFR part 721, subpart E, will state that persons subject to the SNUR who wish to pursue NCELs as an alternative to the 40 CFR 721.63 respirator requirements may request to do so under 40 CFR 721.30. EPA expects that persons whose 40 CFR 721.30 requests to use the NCELs approach for SNURs that are approved by EPA will be required to comply with NCELs provisions that are comparable to those contained in the corresponding TSCA Order for the same chemical substance.

IV. Substances Subject to This Proposed Rule

EPA is proposing significant new use and recordkeeping requirements for certain chemical substances in 40 CFR part 721, subpart E. In this unit, EPA provides the following information for each chemical substance that is identified in this unit as subject to this proposed rule:

- PMN number.
- Chemical name (generic name, if the specific name is claimed as CBI).
- Chemical Abstracts Service (CAS) Registry number (if assigned for non-confidential chemical identities).
- Effective date of and basis for the TSCA Order.
- Potentially Useful Information.
- CFR citation assigned in the regulatory text section of the proposed rule.

The chemicals subject to these proposed SNURs are as follows:

PMN Numbers: P–09–477 and P–09–485.

Chemical Names: 1-Butanesulfonamide, 1,1,2,2,3,3,4,4,4-nonafluoro- (P–09–477) and 1-butanesulfonamide, 1,1,2,2,3,3,4,4,4-nonafluoro-N,N-bis(2-hydroxyethyl)- (P–09–485).

CAS Numbers: 30334–69–1 (P–09–477) and 34455–00–0 (P–09–485).

Effective Date of TSCA Order: November 5, 2009.

Basis for TSCA Order: The PMNs state that the generic (non-confidential) use of the substances will be as fluorinated intermediates. EPA identified concerns for the potential degradation products of the PMN substances. Based on their physical/chemical and environmental fate properties, these degradation products arepotentially persistent, bioaccumulative, and toxic (PBT) chemicals (as described in the New Chemical Program's PBT category at 64 FR 60194; November 1999). EPA estimates that the degradation products of the PMN substances will persist in the environment for more than 6 months and estimates a bioaccumulation factor of greater than or equal to 1,000. Based on the physical/chemical properties of the PMN substances and comparison to analogous chemical substances, EPA hasidentified concerns for lung, blood, and spleen effects for P–09–477 and lung surfactancy, eye irritation, skin irritation, irritation to mucous membranes, and lung irritation for P–09–485. Based on available data on analogs of the potential degradation products of the PMN substances, EPA has identified concerns for liver, blood, and kidney toxicity, developmental toxicity, and immunotoxicity. Based on comparison to analogous chemical substances and available data on analogs of the potential degradation products, EPA has also identified concerns for aquatic toxicity.

In 2009, EPA issued an Order for P–09–477 and P–09–485 under TSCA sections 5(e)(1)(A)(i), 5(e)(1)(A)(ii)(I), and 5(e)(1)(A)(ii)(II), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substances may present an unreasonable risk of injury to human health or the environment and that the substances will be produced in substantial quantities and may be anticipated to enter the environment in substantial quantities and there may be significant (or substantial) exposures to the substances. The Order requires protective measures to limit exposures or otherwise mitigate the potential unreasonable risk. Specifically, the Order prohibits the PMN submitter from any predictable or purposeful release of the PMN substances or any waste stream from manufacturing, processing, and use containing the PMN substances into the waters of the United States.

The protective measures in the Order only apply to the PMN submitter who is subject to the Order. One of the purposes of a SNUR is to extend protective measures to other manufacturers and processors. EPA did not issue SNURs following the Order in 2009 to apply to other manufacturers and processors. EPA is now proposing these SNURs to limit environmental releases for all other manufacturers and processors. EPA is proposing to designate as a significant new use any release to water of waste streams from manufacture, processing, or use containing the substances.

As further discussed in Unit VI., EPA must determine that a use of a chemical substance is not ongoing in order to designate that use as a significant new use. EPA has received no information (*e.g.,* notification under the Chemical Data Reporting rule, TSCA notices, other required reporting) which indicates that any person other than the PMN submitter is engaged in the manufacture or processing of these substances. Because the PMN submitter is subject to the terms of the Order and no other manufacturers or processors have been identified, EPA concludes that the significant new use is not ongoing.

EPA recognizes that manufacturers and processors that would be subject to the proposed SNURs could request under § 721.30 to employ alternative measures to control environmental release of these substances as described in a compliance monitoring plan that provides substantially the same degree of protection as the existing consent order. EPA has identified the following information that at a minimum would be useful to address the requirements of § 721.30(b)(4), (5), and (6):

- Description of the pretreatment process and any treatment technologies employed;
- Description of the analytical method used (and the non-detect limit of method);
- Sampling locations, frequency, QA/QC for handling and transport;
- Monitoring location, frequency, and QA/QC if non-detect limit exceeded; and
- Copy of the facility's National Pollutant Discharge Elimination System

(NPDES) permit(s), and identification of any discharge limits

EPA will review this and other relevant information when making an equivalency determination under § 721.30; however, submission of this information does not guarantee approval of the request.

Potentially Useful Information: EPA has determined that certain information may be potentially useful in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of physical/chemical properties, environmental fate, aquatic toxicity, reproductive/developmental toxicity, and specific target organ toxicity testing may be potentially useful to characterize the human health and environmental effects of the PMN substances. Although the Order does not require these tests, the Order's restrictions remain in effect until the Order is modified or revoked by EPA based on submission of this or other relevant information.

CFR Citation: 40 CFR 721.11635 (P–09–477) and 40 CFR 721.11636 (P–09–485).

PMN Number: P–18–65

Chemical Name: 1,3-Propanediamine, N1,N1-dimethyl-N3-(2,2,6,6-tetramethyl-4-piperidinyl)-.

CAS Number: 78014–16–1.

Effective Date of TSCA Order: October 7, 2020.

Basis for TSCA Order: The PMN states that the use of the substance will be as an absorption agent and lab reagent. Based on submitted test data on the PMN substance, EPA has identified concerns for irritation/corrosion to the eyes, skin, and respiratory tract, acute oral toxicity, and aspiration hazard. Based on a structural alert for nitrogen heterocycles, EPA has also identified concerns for systemic and developmental toxicity. Based on comparison to analogous aliphatic amines, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 431 ppb. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substance may present an unreasonable risk of injury to human health or the environment. The Order was also issued under TSCA sections 5(a)(3)(B)(ii)(II) and 5(e)(1)(A)(ii)(II), based on a finding that the substance is expected to be produced in substantial quantities, and that there may be significant or substantial human exposure to the substance, or that the substance may enter the environment in substantial quantities. To protect against these risks, the Order requires:

- Use of the PMN substance only as an absorption agent or laboratory reagent;
- Unloading of the PMN substance only under a gas (*e.g.,* nitrogen) blanket;
- No domestic manufacture of the PMN substance (*i.e.,* import only);
- Processing of the PMN substance only as described in the PMN or with additional steps that would reduce air emission; and
- No release of the PMN substance into the waters of the United States.

The proposed SNUR would designate as a ''significant new use'' the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information may be potentially useful in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of reproductive toxicity, developmental effects, and specific target organ toxicity testing may be potentially useful to characterize the health effects of the PMN substance. Although the Order does not require these tests, the Order's restrictions remain in effect until the Order is modified or revoked by EPA based on submission of this or other relevant information.

CFR Citation: 40 CFR 721.11637.

PMN Number: P–18–303

Chemical Name: 2-Propenoic acid, polymer with aliphatic cyclic epoxide (generic).

CAS Number: Not available.

Effective Date of TSCA Order: July 30, 2020.

Basis for TSCA Order: The PMN states that the generic (non-confidential) use of the substance will be as an ultraviolet (UV) curable oligomer. Based on comparison to analogous 2-ethylhexyl acrylates and structural alerts for acrylates, EPA has identified concerns for eye, skin, and respiratory tract irritation. Based on data for acrylic acid, EPA has identified concerns for corrosion to the eye and skin. Based on comparison to analogous acrylates/methacrylates, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 2 ppb. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substance may present an unreasonable risk to human health or the environment. To protect against these risks, the Order requires:

- No release of the PMN substance into the waters of the United States.

The proposed SNUR would designate as a ''significant new use'' the absence of this protective measure.

Potentially Useful Information: EPA has determined that certain information may be potentially useful in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of aquatic toxicity testing may be potentially useful to characterize the environmental effects of the PMN substance. Although the Order does not require these tests, the Order's restrictions remain in effect until the Order is modified or revoked by EPA based on submission of this or other relevant information.

CFR Citation: 40 CFR 721.11638.

PMN Number: P–18–345

Chemical Name: 1-Butanone, 2-(dimethylamino)-1-[4-(2-ethyl-2-methyl-3-oxazolidinyl)phenyl]-2-(phenylmethyl)-.

CAS Number: 2230995–63–6.

Effective Date of TSCA Order: February 2, 2021.

Basis for TSCA Order: The PMN states that the use of the substance will be as a UV curing agent in highly pigmented inks, photo-resists, and masks. Based on the physical/chemical properties of the PMN substance and test data on structurally similar substances, the PMN substance is a potentially persistent, bioaccumulative, and toxic (PBT) chemical, as described in EPA's Policy Statement on PBT New Chemical Substances in the **Federal Register** of November 4, 1999 (64 FR 60194) (FRL–6097–7). EPA estimates that the PMN substance will persist in the environment for more than 2 months and estimates a bioaccumulation factor of greater than or equal to 1,000. Based on comparison to structurally analogous chemical substances, EPA has identified concerns for reproductive and developmental effects, eye irritation, and dermal sensitization. Based on comparison to analogous aliphatic amines, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substance may present an unreasonable risk of injury to human health and the

environment. To protect against these risks, the Order requires:

• No release of the PMN substance to the waters of the United States.

The proposed SNUR would designate as a ''significant new use'' the absence of this protective measure.

Potentially Useful Information: EPA has determined that certain information may be potentially useful in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of physical/chemical properties, environmental fate, aquatic toxicity, and reproductive toxicity testing may be potentially useful to characterize the health and environmental effects of the PMN substance. Although the Order does not require these tests, the Order's restrictions remain in effect until the Order is modified or revoked by EPA based on a submission of this or other relevant information.

CFR Citation: 40 CFR 721.11639.

PMN Number: P–18–351

Chemical Name: Acrylic acid, tricyclo alkyl ester (generic).

CAS Number: Not available.

Effective Date of TSCA Order: February 23, 2021.

Basis for TSCA Order: The PMN states that the generic (non-confidential) use of the substance will be in UV curable inks. Based on Michael addition of the acrylate group, EPA has identified concerns for skin irritation and dermal sensitization. Based on the comparison to structurally analogous chemical substances, EPA has also identified concerns for reproductive, developmental, and systemic toxicity. Based on comparison to analogous acrylates/methacrylates and submitted test data on the new chemical substance, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 13 ppb. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substance may present an unreasonable risk of injury to human health or the environment. To protect against these risks, the Order requires:

• Use of personal protective equipment where there is a potential for dermal exposure;

• Use of a National Institute for Occupational Safety and Health (NIOSH)-certified gas/vapor respirator with an assigned protection factor (APF) of at least 50 where there is a potential for inhalation exposure;

• Use of the PMN substance only for the confidential uses allowed in the Order;

• Establishment of a hazard communication program, including human health precautionary statements on each label and in the safety data sheet (SDS); and

• No release of the PMN substance resulting in surface water concentrations that exceed 13 ppb.

The proposed SNUR would designate as a ''significant new use'' the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information may be potentially useful in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of specific target organ toxicity, reproductive/developmental toxicity, and chronic aquatic toxicity testing may be potentially useful to characterize the health and environmental effects of the PMN substance. Although the Order does not require these tests, the Order's restrictions remain in effect until the Order is modified or revoked by EPA based on submission of this or other relevant information.

CFR Citation: 40 CFR 721.11640.

PMN Number: P–19–48

Chemical Name: Poly(oxy-1,2-ethanediyl), .alpha.-hydro-.omega.-hydroxy-, mono-C12-14-alkyl ethers, phosphates, sodium salts.

CAS Number: 1548592–90–0.

Effective Date of TSCA Order: September 24, 2020.

Basis for TSCA Order: The PMN states that the generic (non-confidential) use will be as a coating additive. Based on comparison to analogous chemical substance, EPA has identified concerns for lung effects. Based on test data on the PMN substance and information in the SDS, EPA has also identified concerns for skin irritation. Based on comparison to analogous anionic surfactants, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substance may present an unreasonable risk of injury to human health or the environment. To protect against these risks, the Order requires:

• Use of personal protective equipment where there is a potential for dermal exposure;

• Use of a NIOSH-certified respirator with an APF of at least 10 where there is a potential for inhalation exposure;

• Establishment of a hazard communication program, including human health precautionary statements on each label and in the SDS; and

• No release of the PMN substance to water.

The proposed SNUR would designate as a ''significant new use'' the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information may be potentially useful in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of pulmonary effects and acute and chronic aquatic toxicity testing may be potentially useful to characterize the health and environmental effects of the PMN substance. Although the Order does not require these tests, the Order's restrictions remain in effect until the Order is modified or revoked by EPA based on submission of this or other relevant information.

CFR Citation: 40 CFR 721.11641.

PMN Number: P–20–26

Chemical Name: N-alkyl heteromonocyclic diphenolamide (generic).

CAS Number: Not available.

Effective Date of TSCA Order: September 30, 2020.

Basis for TSCA Order: The PMN states that the generic (non-confidential) use will be as a coating additive. Based on comparison to analogous chemical substance, EPA has identified concerns for lung effects. Based on test data on the PMN substance and information in the SDS, EPA has also identified concerns for skin irritation. Based on comparison to analogous anionic surfactants, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substance may present an unreasonable risk of injury to human health or the environment. To protect against these risks, the Order requires:

• Use of personal protective equipment where there is a potential for dermal exposure;

• Use of a NIOSH-certified respirator with an APF of at least 10 where there is a potential for inhalation exposure;

• Establishment of a hazard communication program, including human health precautionary statements on each label and in the SDS; and

• No release of the PMN substance to water.

The proposed SNUR would designate as a ''significant new use'' the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information may be potentially useful in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of pulmonary effects and acute and chronic aquatic toxicity testing may be potentially useful to characterize the health and environmental effects of the PMN substance. Although the Order does not require these tests, the Order's restrictions remain in effect until the Order is modified or revoked by EPA based on submission of this or other relevant information.

CFR Citation: 40 CFR 721.11641.

PMN Number: P–20–26

Chemical Name: N-alkyl heteromonocyclic diphenolamide (generic).

CAS Number: Not available.

Effective Date of TSCA Order: September 30, 2020.

Basis for TSCA Order: The PMN states that the use of the substance will be as a monomer that is isolated and used for subsequent polymerization. Based on comparison to structurally analogous chemical substances, EPA has identified concerns for systemic effects, reproductive toxicity, developmental toxicity, and irritation/corrosion to the skin, eyes, and respiratory tract. Based on comparison to analogous chemical substances, EPA has determined that toxicity to aquatic organisms may occur at concentrations that exceed 41 ppb. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substance may present an unreasonable risk of injury to human health or the environment. To protect against these risks, the Order requires:

• Use of personal protective equipment where there is a potential for dermal exposure;

• Use of a NIOSH-certified respirator with an APF of at least 10,000 where there is a potential for inhalation exposure;

• No use of the PMN substance other than as a chemical intermediate;

• No exceedance of the confidential annual production volume listed in the Order;

• Establishment of a hazard communication program, including human health precautionary statements on each label and in the SDS; and

• No release of the PMN substance resulting in surface water concentrations that exceed 41 ppb.

The proposed SNUR would designate as a ''significant new use'' the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information may be potentially useful in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of specific target organ toxicity, reproductive toxicity, developmental effects, skin irritation, skin corrosion, eye damage, and aquatic toxicity testing may be potentially useful to characterize the health effects of the PMN substance. Although the Order does not require these tests, the Order's restrictions remain in effect until the Order is modified or revoked by EPA based on submission of this or other relevant information.

CFR Citation: 40 CFR 721.11642.

PMN Number: P–20–46

Chemical Name: Reaction products of alkyl-terminated alkylalumuminoxanes and [[(pentaalkylphenyl-(pentaalkylphenyl)amino)alkyl] alkanediaminato]bis(aralkyl) transition metal coordination compound (generic).

CAS Number: Not available.

Effective Date of TSCA Order: October 30, 2020.

Basis for TSCA Order: The PMN states that the generic (non-confidential) use of the substance will be as a catalyst. Based on the physical/chemical and environmental fate properties of the ligand, the ligand is a potentially persistent, bioaccumulative, and toxic (PBT) chemical, as described in EPA's Policy Statement on PBT New Chemical Substances in the **Federal Register** of November 4, 1999 (64 FR 60194) (FRL–6097–7). EPA estimates that the ligand will persist in the environment for more than 2 months and estimates a bioconcentration factor of greater than or equal to 5,000. Based on physical/chemical properties, structural information and comparison to structurally analogous chemical substances, EPA has identified concerns for lung effects (if respirable, poorly soluble particulates are inhaled), corrosion to the skin, eyes, and respiratory tract, irritation, potential lung toxicity, and carcinogenicity. EPA has also identified concerns for systemic effects and reproductive/developmental effects to the extent the metal components are bioavailable and to the extent the PMN substance is able to chelate nutrient metals. Based on available toxicity data on a residual, EPA has also identified concerns for neurotoxicity and kidney toxicity. Based on the comparison to analogous aluminum compounds, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 28 ppb. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substance may present an unreasonable risk of injury to human health or the environment. To protect against these risks, the Order requires:

• Use of personal protective equipment where there is a potential for dermal exposure;

• No manufacture, processing, or use of the PMN substance other than in an enclosed process as defined in the Order;

• Disposal of the PMN substance and any waste streams from processing and use containing the PMN substance by incineration only;

• No release of the PMN substance directly to air;

• Establishment of a hazard communication program, including human health precautionary statements on each label and in the SDS; and

• No release of the PMN substance to water.

The proposed SNUR would designate as a ''significant new use'' the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information may be potentially useful in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of physical/chemical, environmental fate, specific target organ toxicity, skin corrosion, skin irritation, eye damage, carcinogenicity, and aquatic toxicity testing may be potentially useful to characterize the health and environmental effects of the PMN substance. Although the Order does not require these tests, the Order's restrictions remain in effect until the

Order is modified or revoked by EPA based on submission of this or other relevant information.

CFR Citation: 40 CFR 721.11643.

PMN Number: P–20–72

Chemical Name: Multi-walled carbon nanotubes (generic).

CAS Number: Not available.

Effective Date of TSCA Order: September 29, 2020.

Basis for TSCA Order: The PMN states that the generic (non-confidential) use of the substance will be as an additive used to impart specific physiochemical properties to finished articles. Based on available data for other multi-walled carbon nanotubes and by analogy to asbestos, EPA has identified concerns for lung effects (lung overload and lung carcinogenicity) if respirable, poorly soluble particulates and fibers are inhaled. Based on comparison to structurally analogous chemical substances, EPA has also identified concerns for eye irritation and systemic effects. Based on the presence of a confidential residual, EPA has also identified concerns for acute neurotoxicity, dermal and respiratory sensitization, mutagenicity, and carcinogenicity. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substance may present an unreasonable risk of injury to human health or the environment. To protect against these risks, the Order requires:

- Use of personal protective equipment where there is a potential for dermal exposure;
- Use of a NIOSH-certified particulate respirator with N–100, P–100, or R–100 cartridges with an APF of at least 50 where there is a potential for inhalation exposure;
- No domestic manufacture of the PMN substance (*i.e.,* import only);
- No exceedance of the confidential annual importation volume listed in the Order;
- No importation of the PMN substance other than as confidentially described in the PMN and allowed in the Order;
- No importation of the PMN substance such that the maximum weight percentage of the confidential impurity exceeds the confidential percentage identified in the Order;
- No processing or use of the PMN substance other than for the confidential use allowed in the Order;
- Disposal of the PMN substance and any waste streams from processing and use containing the PMN substance by incineration or landfill only;
- No release of the PMN substance directly to air;
- No processing or use of the PMN substance in application methods that generate a dust, mist, spray, vapor, or aerosol unless such application method occurs in an enclosed process;
- Establishment of a hazard communication program, including human health precautionary statements on each label and in the SDS; and
- No release of the PMN substance to water.

The proposed SNUR would designate as a ''significant new use'' the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information may be potentially useful in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of specific target organ toxicity, pulmonary effects, eye irritation, carcinogenicity, and aquatic toxicity testing may be potentially useful to characterize the health and environmental effects of the PMN substance. Although the Order does not require these tests, the Order's restrictions remain in effect until the Order is modified or revoked by EPA based on submission of this or other relevant information.

CFR Citation: 40 CFR 721.11644.

PMN Number: P–20–120

Chemical Name: Carbomonocyclic sulfonium, salt with trihalo-sulfoalkyl hydroxycarbopolycyclic carboxylate (generic).

CAS Number: Not available.

Effective Date of TSCA Order: November 3, 2020.

Basis for TSCA Order: The PMN states that the generic (non-confidential) use of the PMN substance will be as an ingredient used in the manufacture of photoresist. Based on the physical/chemical properties of the PMN substance and test data on structurally similar substances, the PMN substance is a potentially persistent, bioaccumulative, and toxic (PBT) chemical, as described in EPA's Policy Statement on PBT New Chemical Substances in the **Federal Register** of November 4, 1999 (64 FR 60194) (FRL–6097–7). EPA estimates that the PMN substance will persist in the environment for more than 2 months and estimates a bioaccumulation factor of greater than or equal to 1,000. Based on the photoreactivity of the PMN substance, EPA has identified concerns for photosensitization. Based on comparison to analogous substances, EPA has identified concerns for eye corrosion, irritation, acute toxicity, liver toxicity, and neurotoxicity. Based on positive mutagenicity test results for analogous chemical substances and available data on an analog of the confidential anion analogue, EPA has identified concerns for reproductive (developmental) toxicity. EPA has also identified concerns for lung overload by insoluble polymers for photoacid generators with polymeric anions that have a molecular weight over 10,000 g/mol. EPA was unable to estimate the environmental hazard of the PMN substance. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substance may present an unreasonable risk of injury to human health or the environment. To protect against these risks, the Order requires:

- No manufacture of the PMN substance beyond the time limits specified in the Order without submittal to EPA of the results of certain testing described in the Testing section of the Order;
- Use of personal protective equipment where there is a potential for dermal exposure;
- Establishment of a hazard communication program, including human health precautionary statements on each label and in the SDS;
- No modification of the processing or use of the PMN substance in any way that generates a vapor, dust, mist, or aerosol in a non-enclosed process;
- Use of the PMN substance only for the confidential use allowed in the Order;
- No domestic manufacture of the PMN substance (*i.e.,* import only);
- Import of the PMN substance only in solution, or in any form in sealed containers weighing 5 kilograms or less; and
- No exceedance of the confidential annual importation volume listed the Order.

The proposed SNUR would designate as a ''significant new use'' the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information about the physical/chemical properties, fate, bioaccumulation, environmental hazard, and human health effects of the PMN substance may be potentially useful in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. The submitter has agreed not to exceed the time limits

specified in the Order without performing the required Tier I and Tier II testing outlined in the Testing section of the Order.

CFR Citation: 40 CFR 721.11645.

PMN Numbers: P–20–122, P–20–139, P–20–140, P–20–141, P–20–142, P–20–145, P–20–147, P–20–152, P–20–155, and P–20–159

Chemical Names: Heterocyclic onium compound with 1-substituted-alkyl 2,2,2-trisubstitutedalkyl 2-methyl-2-propenoate (1:1), polymer with acenaphthylene, 4-ethenyl-a,a-dimethylbenzenemethanol and 4-ethenylphenyl acetate, hydrolyzed (generic) (P–20–122), Sulfonium, triphenyl-, 1,2-substituted-alkyltricycloalkyl-1-carboxylate (1:1) (generic) (P–20–139), N-substituted-beta-alanine, heterosubstituted-alkyl ester, ion(1-), triphenylsulfonium (1:1) (generic) (P–20–140), Sulfonium, [4-(1,1-dimethylethyl)phenyl]diphenyl-, salt with heterosubstituted-alkyl tricycloalkane-carboxylate (1:1) (generic) (P–20–141), Dibenzothiophenium, 5-phenyl-, salt with 2,2-diheterosubstituted-2-sulfoethyl substituted-heterotricycloalkane-carboxylate (1:1) (generic) (P–20–142), Substituted heterocyclic onium compound, salt with heteropolysubstitutedalkyl substitutedtricycloalkanecarboxylate (1:1), polymer with disubstituted aromatic compound and 1-methylcyclopentyl 2-methyl-2-propenoate, di-Me 2,2'-(1,2-diazenediyl)bis[2-methylpropenoate]-initiated (generic) (P–20–145), Substituted-2H-thiopyrylium, salt with heterosubstituted-alkyl tricycloalkane-carboxylate (1:1) (generic) (P–20–147), Sulfonium, triphenyl-, salt with 2,2-dihalo-2-sulfoethyl-2-oxo substituted-heterotricycloalkane-heteropolycyclo-carboxylate (1:1) (generic) (P–20–152), Sulfonium, triphenyl-, salt with 5-alkyl-2-alkyl-4-(2,4,6-substituted tri-carbomonocycle, hetero-acid) benzenesulfonate (1:1) (generic) (P–20–155), and Phenoxanthiinium, 10-phenyl, 5-alkyl-2-alkyl-4-(2,4,6-substituted tri-carbomonocycle, hetero-acid) benzenesulfonate (1:1) (generic) (P–20–159).

CAS Numbers: Not available.

Effective Date of TSCA Order: October 28, 2020.

Basis for TSCA Order: PMN P–20–140 states that the use of the PMN substance will as a photoacid generator for chemically amplified photoresist. PMNs P–20–122, P–20–139, P–20–141, P–20–142, P–20–145, P–20–147, P–20–152, P–20–155, and P–20–159 state that the generic (non-confidential) use of the PMN substances will be a contained use for microlithography for electronic device manufacturing. Based on the physical/chemical properties of the PMN substances and test data on structurally similar substances, the PMN substances are potentially persistent, bioaccumulative, and toxic (PBT) chemicals, as described in EPA's Policy Statement on PBT New Chemical Substances in the **Federal Register** of November 4, 1999 (64 FR 60194) (FRL–6097–7). EPA estimates that the PMN substances will persist in the environment for more than 2 months and estimates a bioaccumulation factor of greater than or equal to 1,000. Based on photoreactivity, EPA has identified concerns for photosensitization. Based on comparison to structurally analogous chemical substances, EPA has also identified concerns for eye corrosion, irritation, acute toxicity, liver toxicity, and neurotoxicity. Based on positive mutagenicity test results for analogous chemical substances and available data on an analog of the confidential anion, EPA has identified concerns for reproductive (developmental) toxicity. EPA was unable to estimate the environmental hazard of the PMN substances. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substances may present an unreasonable risk of injury to human health or the environment. To protect against these risks, the Order requires:

- No manufacture of the PMN substances beyond the time limits specified in the Order without submittal to EPA of the results of certain testing described in the Testing section of the Order;
- Use of personal protective equipment where there is a potential for dermal exposure;
- Establishment of a hazard communication program, including human health precautionary statements on each label and in the SDS;
- No modification of the processing of the PMN substances in any way that generates a vapor, dust, mist, or aerosol in a non-enclosed process;
- Use of the PMN substances only for the confidential uses allowed in the Order. For P–20–140 use only as a photoacid generator for chemically amplified photoresist;
- No domestic manufacture of the PMN substances (*i.e.,* import only);
- Import of the PMN substance only in solution, or in any form in sealed containers weighing 5 kilograms or less; and
- No exceedance of the confidential annual importation volumes listed the Order.

The proposed SNUR would designate as a ''significant new use'' the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information about the physical/chemical properties, fate, bioaccumulation, environmental hazard, and human health effects of the PMN substances may be potentially useful in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. The submitter has agreed not to exceed the time limits specified in the Order without performing the required Tier I and Tier II testing outlined in the Testing section of the Order.

CFR Citations: 40 CFR 721.11646 (P–20–122), 40 CFR 721.11647 (P–20–139), 40 CFR 721.11648 (P–20–140), 40 CFR 721.11649 (P–20–141), 40 CFR 721.11650 (P–20–142), 40 CFR 721.11651 (P–20–145), 40 CFR 721.11652 (P–20–147), 40 CFR 721.11653 (P–20–152), 40 CFR 721.11654 (P–20–155), and 40 CFR 721.11655 (P–20–159).

PMN Numbers: P–20–156 and P–20–162

Chemical Names: Substituted, triaryl-, tricycloalkane alkyl disubstituted (generic) (P–20–156) and Sulfonium, triaryl-, 3,3,3-trihalo-2-sulfoalkyl polycycloalkane-1-carboxylate (generic) (P–20–162).

CAS Numbers: Not available.

Effective Date of TSCA Order: December 7, 2020.

Basis for TSCA Order: The PMNs state that the generic (non-confidential) use of the PMN substances will be for photolithography. Based on the physical/chemical properties of the PMN substances and test data on structurally similar substances, the PMN substances are potentially persistent, bioaccumulative, and toxic (PBT) chemicals, as described in EPA's Policy Statement on PBT New Chemical Substances in the **Federal Register** of November 4, 1999 (64 FR 60194) (FRL–6097–7). EPA estimates that the PMN substances will persist in the environment for more than 2 months and estimates a bioaccumulation factor of greater than or equal to 1,000. Based on the photoreactivity of the PMN substances, EPA has identified concerns for photosensitization. Based on comparison to analogous substances, EPA has identified concerns for eye corrosion, irritation, acute toxicity, liver toxicity, and neurotoxicity. Based on

positive mutagenicity test results for analogous chemical substances and available data on an analog of the confidential anion, EPA has identified concerns for reproductive (developmental) toxicity. EPA has also identified concerns for lung overload by insoluble polymers for photoacid generators with polymeric anions that have a molecular weight over 10,000 g/mol. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substances may present an unreasonable risk of injury to human health or the environment. To protect against these risks, the Order requires:

- No manufacture of the PMN substances beyond the time limits specified in the Order without submittal to EPA of the results of certain testing described in the Testing section of the Order;
- Use of personal protective equipment where there is a potential for dermal exposure;
- Establishment of a hazard communication program, including human health precautionary statements on each label and in the SDS;
- No modification of the processing or use of the PMN substances in any way that generates a vapor, dust, mist, or aerosol in a non-enclosed process;
- Use of the PMN substances only for the confidential use allowed in the Order;
- No domestic manufacture of the PMN substances (*i.e.,* import only);
- Import of the PMN substances only in solution, or in any form in sealed containers weighing 5 kilograms or less; and
- No exceedance of the confidential annual importation volumes listed the Order.

The proposed SNUR would designate as a ''significant new use'' the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information about the physical/chemical properties, fate, bioaccumulation, environmental hazard, and human health effects of the PMN substances may be potentially useful in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. The submitter has agreed not to exceed the time limits specified in the Order without performing the required Tier I and Tier II testing outlined in the Testing section of the Order.

CFR Citations: 40 CFR 721.11656 (P–20–156) and 40 CFR 721.11657 (P–20–162).

PMN Number: P–21–6

Chemical Name: Naphthalene derivative (generic).

CAS Number: Not available.

Effective Date of TSCA Order: January 14, 2021.

Basis for TSCA Order: The PMN states that the generic (non-confidential) use of the substance will be for froth flotation to treat rare earth minerals and to remove deleterious substances. Based on comparison to structurally analogous chemical substances, EPA has identified concerns for aquatic toxicity, mortality, neurotoxicity, lung histopathology, reproductive/developmental toxicity, and genotoxicity. Based on the test data for the hydrolysis product, EPA has identified dermal irritation, ocular irritation, respiratory irritation, acute toxicity, neurotoxicity, dermal sensitization, lung effects, and systemic effects. The Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substance may present an unreasonable risk of injury to human health or the environment. To protect against these risks, the Order requires:

- Use of personal protective equipment where there is a potential for dermal exposure;
- Use of a NIOSH-certified respirator with an APF of at least 50 to prevent inhalation exposure where there is a potential for inhalation exposure;
- Establishment of a hazard communication program, including human health precautionary statements on each label and in the SDS;
- Use of the PMN substance only for the confidential use allowed in the Order;
- No domestic manufacture (*i.e.,* import only); and
- No release of the PMN substance to water.

The proposed SNUR would designate as a ''significant new use'' the absence of these protective measures.

Potentially Useful Information: EPA has determined that certain information may be potentially useful in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that will be designated by this SNUR. EPA has determined that the results of specific target organ and aquatic toxicity testing may be potentially useful to characterize the health and environmental effects of the PMN substance. Although the Order does not require these tests, the Order's restrictions remain in effect until the Order is modified or revoked by EPA based on submission of this or other relevant information.

CFR Citation: 40 CFR 721.11658.

V. Rationale and Objectives of the Proposed Rule

A. Rationale

During review of the PMNs submitted for the chemical substances that are the subject to these proposed SNURs, EPA concluded that regulation was warranted under TSCA section 5(e), pending the development of information sufficient to make reasoned evaluations of the health or environmental effects of the chemical substances. The basis for such findings is outlined in Unit IV. Based on these findings, TSCA section 5(e) Orders requiring the use of appropriate exposure controls were negotiated with the PMN submitters. As a general matter, EPA believes it is necessary to follow the TSCA Orders with a SNUR that identifies the absence of those protective measures as significant new uses to ensure that all manufacturers and processors—not just the original submitter—are held to the same standard.

B. Objectives

EPA is proposing these SNURs for specific chemical substances which have undergone premanufacture review because the Agency wants:

- To identify as significant new uses any manufacturing, processing, use, distribution in commerce, or disposal that does not conform to the restrictions imposed by the underlying TSCA Orders, consistent with TSCA section 5(f)(4).
- To have an opportunity to review and evaluate data submitted in a SNUN before the notice submitter begins manufacturing or processing a listed chemical substance for the described significant new use.
- To be able to either determine that the prospective manufacture or processing is not likely to present an unreasonable risk, or to take necessary regulatory action associated with any other determination, before the described significant new use of the chemical substance occurs.

VI. Applicability of the Proposed Significant New Use Designation

To establish a significant new use, EPA must determine that the use is not ongoing. The chemical substances subject to this proposed rule have undergone premanufacture review. In cases where EPA has not received a

notice of commencement (NOC) and the chemical substance has not been added to the TSCA Inventory, no person may commence such activities without first submitting a PMN. Therefore, for chemical substances for which an NOC has not been submitted, EPA concludes that the designated significant new uses are not ongoing.

When chemical substances identified in this proposed rule are added to the TSCA Inventory, EPA recognizes that, before the rule is effective, other persons might engage in a use that has been identified as a significant new use. However, TSCA Orders have been issued for these chemical substances, and the PMN submitters are prohibited by the TSCA Orders from undertaking activities which would be designated as significant new uses. The identities of many of the chemical substances subject to this proposed rule have been claimed as confidential per 40 CFR 720.85. Based on this, the Agency believes that it is highly unlikely that any of the significant new uses described in the regulatory text of this proposed rule are ongoing.

Therefore, EPA designates November 24, 2021 as the cutoff date for determining whether the new use is ongoing. The objective of EPA's approach is to ensure that a person cannot defeat a SNUR by initiating a significant new use before the effective date of the final rule.

In the unlikely event that a person began commercial manufacture or processing of the chemical substances for a significant new use identified as of the above mentioned date, that person would have to cease any such activity upon the effective date of the final rule. To resume their activities, these persons would have to first comply with all applicable SNUR notification requirements and wait until EPA has conducted a review of the notice, made an appropriate determination on the notice, and has taken such actions as are required with that determination.

Issuance of a SNUR for a chemical substance does not signify that the chemical substance is listed on the TSCA Chemical Substance Inventory (TSCA Inventory). Guidance on how to determine if a chemical substance is on the TSCA Inventory is available on the internet at *https://www.epa.gov/tsca-inventory.*

VII. Development and Submission of Information

EPA recognizes that TSCA section 5 does not require developing any particular new information (*e.g.,* generating test data) before submission of a SNUN. There is an exception: If a person is required to submit information for a chemical substance pursuant to a rule, TSCA Order or consent agreement under TSCA section 4, then TSCA section 5(b)(1)(A) requires such information to be submitted to EPA at the time of submission of the SNUN.

In the absence of a rule, TSCA Order, or consent agreement under TSCA section 4 covering the chemical substance, persons are required only to submit information in their possession or control and to describe any other information known or reasonably ascertainable (see 40 CFR 720.50). However, upon review of PMNs and SNUNs, the Agency has the authority to require appropriate testing. Unit IV. lists potentially useful information for the SNURs listed in this document. Descriptions of this information is provided for informational purposes. The potentially useful information identified in Unit IV. will be useful to EPA's evaluation in the event that someone submits a SNUN for the significant new use.

EPA strongly encourages persons, before performing any testing, to consult with the Agency. Furthermore, pursuant to TSCA section 4(h), which pertains to reduction of testing in vertebrate animals, EPA encourages dialog with the Agency on the use of alternative test methods and strategies (also called New Approach Methodologies, or NAMs), if available, to generate the recommended test data. EPA encourages dialog with Agency representatives to help determine how best the submitter can meet both the data needs and the objective of TSCA section 4(h). For more information on alternative test methods and strategies to reduce vertebrate animal testing, visit *https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/alternative-test-methods-and-strategies-reduce.*

In some of the TSCA Orders for the chemical substances identified in this rule, EPA has established time limits in view of the lack of data on the potential health and environmental risks that may be posed by the significant new uses or increased exposure to the chemical substances. These limits cannot be exceeded unless the PMN submitter first submits the results of specified tests that would permit a reasoned evaluation of the potential risks posed by these chemical substances. The SNURs contain the same time limits as the TSCA Orders. Exceeding these production limits is defined as a significant new use. Persons who intend to exceed the time limit must notify the Agency by submitting a SNUN at least 90 days in advance of commencement of non-exempt commercial manufacture or processing.

Any request by EPA for the triggered and pended testing described in the TSCA Orders was made based on EPA's consideration of available screening-level data, if any, as well as other available information on appropriate testing for the PMN substances. Further, any such testing request on the part of EPA that includes testing on vertebrates was made after consideration of available toxicity information, computational toxicology and bioinformatics, and high-throughput screening methods and their prediction models.

The potentially useful information listed in Unit IV. may not be the only means of addressing the potential risks of the chemical substance. However, submitting a SNUN without any test data or other information may increase the likelihood that EPA will take action under TSCA section 5(e) or 5(f). EPA recommends that potential SNUN submitters contact EPA early enough so that they will be able to conduct the appropriate tests.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs which provide detailed information on the following:

- Human exposure and environmental release that may result from the significant new use of the chemical substances.
- Information on risks posed by the chemical substances compared to risks posed by potential substitutes.

VIII. SNUN Submissions

According to 40 CFR 721.1(c), persons submitting a SNUN must comply with the same notification requirements and EPA regulatory procedures as persons submitting a PMN, including submission of test data on health and environmental effects as described in 40 CFR 720.50. SNUNs must be submitted on EPA Form No. 7710–25, generated using e-PMN software, and submitted to the Agency in accordance with the procedures set forth in 40 CFR 720.40. E–PMN software is available electronically at *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca.*

IX. Economic Analysis

EPA has evaluated the potential costs of establishing SNUN requirements for potential manufacturers and processors of the chemical substances subject to this proposed rule. EPA's complete economic analysis is available in the docket for this rulemaking.

X. Statutory and Executive Order Reviews

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

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulations and Regulatory Review

This action proposes to establish SNURs for several new chemical substances that were the subject of PMNs. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act (PRA)

According to the PRA (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable.

The information collection activities associated with SNURs have already been approved by OMB under the PRA and assigned OMB control number 2070–0012 (EPA ICR No. 574). This proposed rule does not contain any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average between 30 and 170 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required SNUN.

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including using automated collection techniques, to the Director, Regulatory Support Division, Office of Mission Support (2822T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

C. Regulatory Flexibility Act (RFA)

Pursuant to the RFA section 605(b) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that promulgation of these SNURs would not have a significant adverse economic impact on a substantial number of small entities. The requirement to submit a SNUN applies to any person (including small or large entities) who intends to engage in any activity described in the final rule as a ''significant new use.'' Because these uses are ''new,'' based on all information currently available to EPA, it appears that no small or large entities presently engage in such activities. A SNUR requires that any person who intends to engage in such activity in the future must first notify EPA by submitting a SNUN. EPA's experience to date is that, in response to the promulgation of SNURs covering over 1,000 chemicals, the Agency receives only a small number of notices per year. For example, the number of SNUNs received was seven in Federal fiscal year (FY) 2013, 13 in FY2014, six in FY2015, 10 in FY2016, 14 in FY2017, and 18 in FY2018 and only a fraction of these were from small businesses. In addition, the Agency currently offers relief to qualifying small businesses by reducing the SNUN submission fee from $16,000 to $2,800. This lower fee reduces the total reporting and recordkeeping of cost of submitting a SNUN to about $10,116 for qualifying small firms. Therefore, the potential economic impacts of complying with this proposed SNUR are not expected to be significant or adversely impact a substantial number of small entities. In a SNUR that published in the **Federal Register** of June 2, 1997 (62 FR 29684) (FRL–5597–1), the Agency presented its general determination that final SNURs are not expected to have a significant economic impact on a substantial number of small entities, which was provided to the Chief Counsel for Advocacy of the Small Business Administration.

D. Unfunded Mandates Reform Act (UMRA)

Based on EPA's experience with proposing and finalizing SNURs, State, local, and Tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or Tribal government will be impacted by this action. As such, EPA has determined that this proposed rule would not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of UMRA sections 202, 203, 204, or 205 (2 U.S.C. 1501 *et seq.*).

E. Executive Order 13132: Federalism

This action would not have a substantial direct effect on States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999).

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

This action would not have Tribal implications because it is not expected to have substantial direct effects on Indian Tribes. This action would not significantly nor uniquely affect the communities of Indian Tribal governments, nor would it involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175 (65 FR 67249, November 9, 2000), do not apply to this action.

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

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

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

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because this proposed rule is not expected to affect energy supply, distribution, or use.

I. National Technology Transfer and Advancement Act (NTTAA)

This action does not involve any technical standards subject to NTTAA section 12(d) (15 U.S.C. 272 note).

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

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898 (59 FR 7629, February 16, 1994).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: October 26, 2021.

Tala Henry,

Deputy Director, Office of Pollution Prevention and Toxics.

Therefore, for the reasons stated in the preamble, EPA proposes that 40 CFR chapter I be amended as follows:

PARTS 721—SIGNIFICANT NEW USES OF CHEMICAL SUBSTANCES

■ 1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

■ 2. Add §§ 721.11635 through 721.11658 to subpart E to read as follows:

Subpart E–Significant New Uses for Specific Chemical Substances

Sec.

* * * * *

721.11635 1-Butanesulfonamide, 1,1,2,2,3,3,4,4,4-nonafluoro-.
721.11636 1-Butanesulfonamide, 1,1,2,2,3,3,4,4,4-nonafluoro-N,N-bis(2-hydroxyethyl)-.
721.11637 1,3-Propanediamine, N1,N1-dimethyl-N3-(2,2,6,6-tetramethyl-4-piperidinyl)-.
721.11638 2-Propenoic acid, polymer with aliphatic cyclic epoxide (generic).
721.11639 1-Butanone, 2-(dimethylamino)-1-[4-(2-ethyl-2-methyl-3-oxazolidinyl)phenyl]-2-(phenylmethyl)-.
721.11640 Acrylic acid, tricyclo alkyl ester (generic).
721.11641 Poly(oxy-1,2-ethanediyl), .alpha.-hydro-.omega.-hydroxy-, mono-C12-14-alkyl ethers, phosphates, sodium salts.
721.11642 N-alkyl heteromonocyclic diphenolamide (generic).
721.11643 Reaction products of alkyl-terminated alkylalumuminoxanes and [[(pentaalkylphenyl-(pentaalkylphenyl) amino)alkyl]alkanediaminato] bis(aralkyl) transition metal coordination compound (generic).
721.11644 Multi-walled carbon nanotubes (generic).
721.11645 Carbomonocyclic sulfonium, salt with trihalo-sulfoalkyl hydroxycarbopolycyclic carboxylate (generic).
721.11646 Heterocyclic onium compound with 1-substituted-alkyl 2,2,2-trisubstitutedalkyl 2-methyl-2-propenoate (1:1) polymer with acenaphthylene, 4-ethenyl-a,a-dimethylbenzenemethanol and 4-ethenylphenyl acetate, hydrolyzed (generic).
721.11647 Sulfonium, triphenyl-, 1,2-substituted-alkyltricycloalkyl-1-carboxylate (1:1) (generic).
721.11648 N-substituted-beta-alanine, heterosubstituted-alkyl ester, ion(1-), triphenyl sulfonium (1:1) (generic).
721.11649 Sulfonium, [4-(1,1-dimethylethyl)phenyl]diphenyl-, salt with heterosubstituted-alkyl tricycloalkane-carboxylate (1:1) (generic).
721.11650 Dibenzothiophenium, 5-phenyl-, salt with 2,2-diheterosubstituted-2-sulfoethyl substituted-heterotricycloalkane-carboxylate (1:1) (generic).
721.11651 Substituted heterocyclic onium compound, salt with heteropolysubstitutedalkyl substitutedtricycloalkanecarboxylate (1:1), polymer with disubstituted aromatic compound and 1-methylcyclopentyl 2-methyl-2-propenoate, di-Me 2,2′-(1,2-diazenediyl)bis[2-methylpropenoate]-initiated (generic).
721.11652 Substituted-2H-thiopyrylium, salt with heterosubstituted-alkyl tricycloalkane-carboxylate (1:1) (generic).
721.11653 Sulfonium, triphenyl-, salt with 2,2-dihalo-2-sulfoethyl-2-oxo substituted-heterotricycloalkane-heteropolycyclo-carboxylate (1:1) (generic).
721.11654 Sulfonium, triphenyl-, salt with 5-alkyl-2-alkyl-4-(2,4,6-substituted tri-carbomonocycle, hetero-acid) benzenesulfonate (1:1) (generic).
721.11655 Phenoxanthiinium, 10-phenyl, 5-alkyl-2-alkyl-4-(2,4,6-substituted tri-carbomonocycle, hetero-acid) benzenesulfonate (1:1) (generic).
721.11656 Substituted, triaryl-, tricycloalkane alkyl disubstituted (generic) (P–20–156).
721.11657 Substituted, triaryl-, tricycloalkane alkyl disubstituted (generic) (P–20–162).
721.11658 Naphthalene derivative (generic).

* * * * *

§ 721.11635 1-Butanesulfonamide, 1,1,2,2,3,3,4,4,4-nonafluoro-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 1-butanesulfonamide, 1,1,2,2,3,3,4,4,4-nonafluoro- (PMN P–09–477; CAS No. 30334–69–1) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.*The provisionsof subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11636 1-Butanesulfonamide, 1,1,2,2,3,3,4,4,4-nonafluoro-N,N-bis(2-hydroxyethyl)-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 1-butanesulfonamide, 1,1,2,2,3,3,4,4,4-nonafluoro-N,N-bis(2-hydroxyethyl)- (PMN P–09–485; CAS No. 34455–00–0) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1)

(ii) [Reserved]

(b) *Specific requirements.*The provisionsof subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11637 1,3-Propanediamine, N1,N1-dimethyl-N3-(2,2,6,6-tetramethyl-4-piperidinyl)-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 1,3-propanediamine, N1,N1-dimethyl-N3-(2,2,6,6-tetramethyl-4-piperidinyl)- (PMN P–18–65; CAS No. 78014–16–1) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f). It is a significant new use to use the substance other than as an absorption agent or as a laboratory reagent. It is a significant new use to unload the substance other than under a gas (*e.g.,* nitrogen) blanket. It is a significant new use to process the substance other than as described in the PMN or without additional steps that would reduce air emissions.

(ii) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The

provisions of § 721.185 apply to this section.

§ 721.11638 2-Propenoic acid, polymer with aliphatic cyclic epoxide (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as 2-propenoic acid, polymer with aliphatic cyclic epoxide (PMN P–18–303) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted or cured.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11639 1-Butanone, 2-(dimethylamino)-1-[4-(2-ethyl-2-methyl-3-oxazolidinyl)phenyl]-2-(phenylmethyl)-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 1-butanone, 2-(dimethylamino)-1-[4-(2-ethyl-2-methyl-3-oxazolidinyl)phenyl]-2-(phenylmethyl)- (PMN P–18–345; CAS No. 2230995–63–6) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted or cured.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11640 Acrylic acid, tricyclo alkyl ester (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as acrylic acid, tricyclo alkyl ester (PMN P–18–351) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted or cured.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3) through (5), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (a)(4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 50.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (d), (f), (g)(1), and (g)(5). For purposes of § 721.72(g)(1), this substance may cause: Skin irritation; skin sensitization; reproductive toxicity; specific target organ toxicity. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k).

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N=13.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

§ 721.11641 Poly(oxy-1,2-ethanediyl), .alpha.-hydro-.omega.-hydroxy-, mono-C12-14-alkyl ethers, phosphates, sodium salts.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as poly(oxy-1,2-ethanediyl), .alpha.-hydro-.omega.-hydroxy-, mono-C12-14-alkyl ethers, phosphates, sodium salts (PMN P–19–48; CAS No. 1548592–90–0) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3) through (5), (b), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (a)(4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 10. For purposes of § 721.63(b), the concentration is set at 1.0%.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (f), (g)(1), and (g)(5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: Skin irritation; specific target organ toxicity. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (h) and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11642 N-alkyl heteromonocyclic diphenolamide (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as N-alkyl heteromonocyclic diphenolamide (PMN P–20–26) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3) through (5), (b), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (a)(4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 10,000. For purposes of § 721.63(b), the concentration is set at 1.0%.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (f), (g)(1), (g)(3), and (g)(5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: Skin irritation; skin corrosion; eye irritation; serious eye damage; reproductive toxicity; specific target organ toxicity. For purposes of § 721.72(g)(3), this substance may cause: Aquatic toxicity. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g) and (t).

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N=41.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725 (b)(1) apply to paragraph (a)(2)(iii) of this section.

§ 721.11643 Reaction products of alkyl-terminated alkylalumuminoxanes and [[(pentaalkylphenyl-(pentaalkylphenyl) amino)alkyl]alkanediaminato]bis(aralkyl) transition metal coordination compound (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as reaction products of alkyl-terminated alkylalumuminoxanes and [[(pentaalkylphenyl-(pentaalkylphenyl) amino)alkyl]alkanediaminato]bis (aralkyl) transition metal coordination compound (PMN P–20–46) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted or cured.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (b), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(b), the concentration is set at 0.1%.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (f), (g)(1), (g)(3), and (g)(5). For purposes of § 721.72(e), the concentration is set at 0.1%. For purposes of § 721.72(g)(1), this substance may cause: Skin corrosion; skin irritation; serious eye damage; carcinogenicity; reproductive toxicity; specific target organ toxicity. For purposes of § 721.72(g)(3), this substance may cause: Aquatic toxicity. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(a) through (c).

(iv) *Disposal.* Requirements as specified in § 721.85(b)(1) and (c)(1). It is a significant new use to release the substance directly to air.

(v) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (k) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11644 Multi-walled carbon nanotubes (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as multi-walled carbon nanotubes (PMN P–20–72) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted or cured.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3) through (5), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (a)(4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(5), respirators must include a N–100, P–100, or R–100 cartridge and provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 50.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (d), (f), (g)(1), (g)(3), and (g)(5). For purposes of § 721.72(g)(1), this substance may cause: Eye irritation; respiratory sensitization; skin sensitization; carcinogenicity; specific target organ toxicity. For purposes of § 721.72(g)(3), this substance may cause: Unknown aquatic toxicity. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k) and (t). It is a significant new use to import the substance such that the maximum weight percentage of the confidential impurity exceeds the confidential percentage specified in the Order. It is a significant new use to import the

substance other than as confidentially described in the PMN and allowed in the Order. It is a significant new use to process or use the substance in application methods that generate a dust, mist, spray, vapor, or aerosol unless such application method occurs in an enclosed process.

(iv) *Disposal.* Requirements as specified in § 721.85(b)(1), (b)(2), (c)(1), and (c)(2). It is a significant new use to release the substance directly to air.

(v) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (k) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

§ 721.11645 Carbomonocyclic sulfonium, salt with trihalo-sulfoalkyl hydroxycarbopolycyclic carboxylate (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as carbomonocyclic sulfonium, salt with trihalo-sulfoalkyl hydroxycarbopolycyclic carboxylate (PMN P–20–120) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted or adhered onto a semiconductor wafer surface or similar manufactured article used in the production of semiconductor technologies.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i) and (iii), (a)(3), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (f), (g)(1), (g)(2)(i) through (iii) and (v), (g)(3)(i) and (ii), and (g)(5). For purposes of § 721.72(e), the concentration is set at 1%. For purposes of § 721.72(g)(1), this substance may cause: Skin irritation; acute toxicity; skin sensitization; serious eye damage; specific target organ toxicity; neurotoxicity; genetic toxicity; reproductive toxicity. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (t). It is a significant new use to import the substance other than in solution, unless in sealed containers weighing 5 kilograms or less. It is a significant new use to process the substance in any way that generates dust, mist, or aerosol in a non-enclosed process. It is a significant new use to manufacture the substance longer than 18 months.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

§ 721.11646 Heterocyclic onium compound with 1-substituted-alkyl 2,2,2-trisubstitutedalkyl 2-methyl-2-propenoate (1:1) polymer with acenaphthylene, 4-ethenyl-a,a-dimethylbenzenemethanol and 4-ethenylphenyl acetate, hydrolyzed (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as heterocyclic onium compound with 1-substituted-alkyl 2,2,2-trisubstitutedalkyl 2-methyl-2-propenoate (1:1) polymer with acenaphthylene, 4-ethenyl-a,a-dimethylbenzenemethanol and 4-ethenylphenyl acetate, hydrolyzed (PMN P–20–122) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted or adhered (during photolithographic processes) onto a semiconductor wafer surface or similar manufactured article used in the production of semiconductor technologies.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i) and (iii), (a)(3), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (f), (g)(1), (g)(2)(i) through (iii) and (v), (g)(3)(i) and (ii), and (g)(5). For purposes of § 721.72(e), the concentration is set at 1%. For purposes of § 721.72(g)(1), this substance may cause: Skin irritation; acute toxicity; skin sensitization; serious eye damage; specific target organ toxicity; neurotoxicity; genetic toxicity; reproductive toxicity. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (t). It is a significant new use to import the substance other than in solution, unless in sealed containers weighing 5 kilograms or less. It is a significant new use to process the substance in any way that generates dust, mist, or aerosol in a non-enclosed process. It is a significant new use to manufacture the substance longer than 18 months.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

§ 721.11647 Sulfonium, triphenyl-, 1,2-substituted-alkyltricycloalkyl-1-carboxylate (1:1) (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as sulfonium, triphenyl-, 1,2-substituted-alkyltricycloalkyl-1-carboxylate (1:1) (PMN P–20–139) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted or adhered (during photolithographic processes) onto a semiconductor wafer surface or similar manufactured article used in the production of semiconductor technologies.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i) and (iii), (a)(3), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (f), (g)(1), (g)(2)(i) through (iii) and (v), (g)(3)(i) and (ii), and (g)(5). For purposes of § 721.72(e), the concentration is set at 1%. For purposes of § 721.72(g)(1), this substance may cause: Skin irritation; acute toxicity; skin sensitization; serious eye damage; specific target organ toxicity; neurotoxicity; genetic toxicity; reproductive toxicity. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (t). It is a significant new use to import the substance other than in solution, unless in sealed containers weighing 5 kilograms or less. It is a significant new use to process the substance in any way that generates dust, mist, or aerosol in a non-enclosed process. It is a significant new use to manufacture the substance longer than 18 months.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

§ 721.11648 N-substituted-beta-alanine, heterosubstituted-alkyl ester, ion(1-), triphenyl sulfonium (1:1) (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as n-substituted-beta-alanine, heterosubstituted-alkyl ester, ion(1-), triphenyl sulfonium (1:1) (PMN P–20–140) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted or adhered (during photolithographic processes) onto a semiconductor wafer surface or similar manufactured article used in the production of semiconductor technologies.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i) and (iii), (a)(3), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (f), (g)(1), (g)(2)(i) through (iii) and (v), (g)(3)(i) and (ii), and (g)(5). For purposes of § 721.72(e), the concentration is set at 1%. For purposes of § 721.72(g)(1), this substance may cause: Skin irritation; acute toxicity; skin sensitization; serious eye damage; specific target organ toxicity; neurotoxicity; genetic toxicity; reproductive toxicity. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f) and (t). It is a significant new use to use the substance other than as a photoacid generator for chemically amplified photoresist. It is a significant new use to import the substance other than in solution, unless in sealed containers weighing 5 kilograms or less. It is a significant new use to process the substance in any way that generates dust, mist, or aerosol in a non-enclosed process. It is a significant new use to manufacture the substance longer than 18 months.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

§ 721.11649 Sulfonium, [4-(1,1-dimethylethyl)phenyl]diphenyl-, salt with heterosubstituted-alkyl tricycloalkane-carboxylate (1:1) (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as sulfonium, [4-(1,1-dimethylethyl)phenyl]diphenyl-, salt with heterosubstituted-alkyl tricycloalkane-carboxylate (1:1) (PMN P–20–141) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted or adhered (during photolithographic processes) onto a semiconductor wafer surface or similar manufactured article used in the production of semiconductor technologies.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i) and (iii), (a)(3), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (f), (g)(1), (g)(2)(i) through (iii) and (v), (g)(3)(i) and (ii), and (g)(5). For purposes of § 721.72(e), the concentration is set at 1%. For purposes of § 721.72(g)(1), this substance may cause: Skin irritation; acute toxicity; skin sensitization; serious eye damage; specific target organ toxicity;

neurotoxicity; genetic toxicity; reproductive toxicity. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (t). It is a significant new use to import the substance other than in solution, unless in sealed containers weighing 5 kilograms or less. It is a significant new use to process the substance in any way that generates dust, mist, or aerosol in a non-enclosed process. It is a significant new use to manufacture the substance longer than 18 months.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

§ 721.11650 Dibenzothiophenium, 5-phenyl-, salt with 2,2-diheterosubstituted-2-sulfoethyl substituted-heterotricycloalkane-carboxylate (1:1) (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as dibenzothiophenium, 5-phenyl-, salt with 2,2-diheterosubstituted-2-sulfoethyl substituted-heterotricycloalkane-carboxylate (1:1) (PMN P–20–142) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted or adhered (during photolithographic processes) onto a semiconductor wafer surface or similar manufactured article used in the production of semiconductor technologies.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i) and (iii), (a)(3), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (f), (g)(1), (g)(2)(i) through (iii) and (v), (g)(3)(i) and (ii), and (g)(5). For purposes of § 721.72(e), the concentration is set at 1%. For purposes of § 721.72(g)(1), this substance may cause: Skin irritation; acute toxicity; skin sensitization; serious eye damage; specific target organ toxicity; neurotoxicity; genetic toxicity; reproductive toxicity. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (t). It is a significant new use to import the substance other than in solution, unless in sealed containers weighing 5 kilograms or less. It is a significant new use to process the substance in any way that generates dust, mist, or aerosol in a non-enclosed process. It is a significant new use to manufacture the substance longer than 18 months.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

§ 721.11651 Substituted heterocyclic onium compound, salt with heteropolysubstitutedalkyl substitutedtricycloalkanecarboxylate (1:1), polymer with disubstituted aromatic compound and 1-methylcyclopentyl 2-methyl-2-propenoate, di-Me 2,2′-(1,2-diazenediyl)bis[2-methylpropenoate]-initiated (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as substituted heterocyclic onium compound, salt with heteropolysubstitutedalkyl substitutedtricycloalkanecarboxylate (1:1), polymer with disubstituted aromatic compound and 1-methylcyclopentyl 2-methyl-2-propenoate, di-Me 2,2′-(1,2-diazenediyl)bis[2-methylpropenoate]-initiated (PMN P–20–145) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted or adhered (during photolithographic processes) onto a semiconductor wafer surface or similar manufactured article used in the production of semiconductor technologies.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i) and (iii), (a)(3), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (f), (g)(1), (g)(2)(i) through (iii) and (v), (g)(3)(i) and (ii), and (g)(5). For purposes of § 721.72(e), the concentration is set at 1%. For purposes of § 721.72(g)(1), this substance may cause: Skin irritation; acute toxicity; skin sensitization; serious eye damage; specific target organ toxicity; neurotoxicity; genetic toxicity; reproductive toxicity. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (t). It is a significant new use to import the substance other than in solution, unless in sealed containers weighing 5 kilograms or less. It is a significant new use to process the substance in any way that generates dust, mist, or aerosol in a non-enclosed process. It is a significant new use to manufacture the substance longer than 18 months.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

§ 721.11652 Substituted-2H-thiopyrylium, salt with heterosubstituted-alkyl tricycloalkane-carboxylate (1:1) (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as substituted-2H-thiopyrylium, salt with heterosubstituted-alkyl tricycloalkane-carboxylate (1:1) (PMN P–20–147) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted or adhered (during photolithographic processes) onto a semiconductor wafer surface or similar manufactured article used in the production of semiconductor technologies.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i) and (iii), (a)(3), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (f), (g)(1), (g)(2)(i) through (iii) and (v), (g)(3)(i) and (ii), and (g)(5). For purposes of § 721.72(e), the concentration is set at 1%. For purposes of § 721.72(g)(1), this substance may cause: Skin irritation; acute toxicity; skin sensitization; serious eye damage; specific target organ toxicity; neurotoxicity; genetic toxicity; reproductive toxicity. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (t). It is a significant new use to import the substance other than in solution, unless in sealed containers weighing 5 kilograms or less. It is a significant new use to process the substance in any way that generates dust, mist, or aerosol in a non-enclosed process. It is a significant new use to manufacture the substance longer than 18 months.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

§ 721.11653 Sulfonium, triphenyl-, salt with 2,2-dihalo-2-sulfoethyl-2-oxo substituted-heterotricycloalkane-heteropolycyclo-carboxylate (1:1) (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as sulfonium, triphenyl-, salt with 2,2-dihalo-2-sulfoethyl-2-oxo substituted-heterotricycloalkane-heteropolycyclo-carboxylate (1:1) (PMN P–20–152) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted or adhered (during photolithographic processes) onto a semiconductor wafer surface or similar manufactured article used in the production of semiconductor technologies.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i) and (iii), (a)(3), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (f), (g)(1), (g)(2)(i) through (iii) and (v), (g)(3)(i) and (ii), and (g)(5). For purposes of § 721.72(e), the concentration is set at 1%. For purposes of § 721.72(g)(1), this substance may cause: Skin irritation; acute toxicity; skin sensitization; serious eye damage; specific target organ toxicity; neurotoxicity; genetic toxicity; reproductive toxicity. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (t). It is a significant new use to import the substance other than in solution, unless in sealed containers weighing 5 kilograms or less. It is a significant new use to process the substance in any way that generates dust, mist, or aerosol in a non-enclosed process. It is a significant new use to manufacture the substance longer than 18 months.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

§ 721.11654 Sulfonium, triphenyl-, salt with 5-alkyl-2-alkyl-4-(2,4,6-substituted tri-carbomonocycle, hetero-acid) benzenesulfonate (1:1) (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as sulfonium, triphenyl-, salt with 5-alkyl-2-alkyl-4-(2,4,6-substituted tri-carbomonocycle, hetero-acid) benzenesulfonate (1:1) (PMN P–20–155) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted or adhered (during photolithographic processes) onto a semiconductor wafer surface or similar manufactured article used in the production of semiconductor technologies.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i) and (iii), (a)(3), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a)

through (f), (g)(1), (g)(2)(i) through (iii) and (v), (g)(3)(i) and (ii), and (g)(5). For purposes of § 721.72(e), the concentration is set at 1%. For purposes of § 721.72(g)(1), this substance may cause: Skin irritation; acute toxicity; skin sensitization; serious eye damage; specific target organ toxicity; neurotoxicity; genetic toxicity; reproductive toxicity. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (t). It is a significant new use to import the substance other than in solution, unless in sealed containers weighing 5 kilograms or less. It is a significant new use to process the substance in any way that generates dust, mist, or aerosol in a non-enclosed process. It is a significant new use to manufacture the substance longer than 18 months.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

§ 721.11655 Phenoxanthiinium, 10-phenyl, 5-alkyl-2-alkyl-4-(2,4,6-substituted tri-carbomonocycle, hetero-acid) benzenesulfonate (1:1) (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as phenoxanthiinium, 10-phenyl, 5-alkyl-2-alkyl-4-(2,4,6-substituted tri-carbomonocycle, hetero-acid) benzenesulfonate (1:1) (PMN P–20–159) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted or adhered (during photolithographic processes) onto a semiconductor wafer surface or similar manufactured article used in the production of semiconductor technologies.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i) and (iii), (a)(3), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (f), (g)(1), (g)(2)(i) through (iii) and (v), (g)(3)(i) and (ii), and (g)(5). For purposes of § 721.72(e), the concentration is set at 1%. For purposes of § 721.72(g)(1), this substance may cause: Skin irritation; acute toxicity; skin sensitization; serious eye damage; specific target organ toxicity; neurotoxicity; genetic toxicity; reproductive toxicity. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (t). It is a significant new use to import the substance other than in solution, unless in sealed containers weighing 5 kilograms or less. It is a significant new use to process the substance in any way that generates dust, mist, or aerosol in a non-enclosed process. It is a significant new use to manufacture the substance longer than 18 months.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

§ 721.11656 Substituted, triaryl-, tricycloalkane alkyl disubstituted (generic) (P–20–156).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as substituted, triaryl-, tricycloalkane alkyl disubstituted (PMN P–20–156) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted or adhered (during photolithographic processes) onto a semiconductor wafer surface or similar manufactured article used in the production of semiconductor technologies.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i) and (iii), (a)(3), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (f), (g)(1), (g)(2)(i) through (iii) and (v), (g)(3)(i) and (ii), and (g)(5). For purposes of § 721.72(e), the concentration is set at 1%. For purposes of § 721.72(g)(1), this substance may cause: Skin irritation; acute toxicity; skin sensitization; serious eye damage; specific target organ toxicity; neurotoxicity; genetic toxicity; reproductive toxicity. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (t). It is a significant new use to import the substance other than in solution, unless in sealed containers weighing 5 kilograms or less. It is a significant new use to process the substance in any way that generates dust, mist, or aerosol in a non-enclosed process. It is a significant new use to manufacture the substance longer than 18 months.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

§ 721.11657 Substituted, triaryl-, tricycloalkane alkyl disubstituted (generic) (P–20–162).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as substituted, triaryl-, tricycloalkane alkyl disubstituted (PMN P–20–162) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance after they have been completely reacted or adhered (during photolithographic processes) onto a semiconductor wafer surface or similar manufactured article used in the production of semiconductor technologies.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i) and (iii), (a)(3), and (c). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (f), (g)(1), (g)(2)(i) through (iii) and (v), (g)(3)(i) and (ii), and (g)(5). For purposes of § 721.72(e), the concentration is set at 1%. For purposes of § 721.72(g)(1), this substance may cause: Skin irritation; acute toxicity; skin sensitization; serious eye damage; specific target organ toxicity; neurotoxicity; genetic toxicity; reproductive toxicity. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (t). It is a significant new use to import the substance other than in solution, unless in sealed containers weighing 5 kilograms or less. It is a significant new use to process the substance in any way that generates dust, mist, or aerosol in a non-enclosed process. It is a significant new use to manufacture the substance longer than 18 months.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

§ 721.11658 Naphthalene derivative (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as naphthalene derivative (PMN P–21–6) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) and (3) through (5). When determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and (a)(4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible. For purposes of § 721.63(a)(5), respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 50.

(ii) *Hazard communication.* Requirements as specified in § 721.72(a) through (d), (f), (g)(1), (g)(3) and (g)(5). For purposes of § 721.72(g)(1), this substance may cause: Acute toxicity; skin irritation; skin sensitization; germ cell mutagenicity; reproductive toxicity; specific target organ toxicity. For purposes of § 721.72(g)(3), this substance may cause: Aquatic toxicity. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f) and (k).

(iv) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (i) and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(iii) of this section.

[FR Doc. 2021–24790 Filed 11–23–21; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–HQ–ES–2019–0115; FF09E23000 FXES1111090FEDR 212]

RIN 1018–BD84

Endangered and Threatened Wildlife and Plants; Regulations for Designating Critical Habitat

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Proposed rule; extension of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (the ''Service''), are extending the comment period on our October 27, 2021, proposed rule to rescind the final rule titled ''Endangered and Threatened Wildlife and Plants; Regulations for Designating Critical Habitat'' that published on December 18, 2020, and established regulations for exclusions from critical habitat. We are extending the comment period by 15 days.

DATES: The comment period on the proposed rule that published October 27, 2021, at 86 FR 59346, is extended. We will accept comments received or postmarked on or before December 13, 2021.

ADDRESSES: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter the docket number or RIN for this rulemaking (presented above in the document headings). For best results, do not copy and paste either number; instead, type the docket number or RIN into the Search box using hyphens. Then, click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rule box to locate this document. You may submit a comment by clicking on ''Comment.''

(2) *By hard copy:* Submit by U.S. mail: Public Comments Processing, Attn: FWS–HQ–ES–2019–0115, U.S. Fish and Wildlife Service, MS: JAO (PRB/3W), 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see Public Comments, below, for more information).

FOR FURTHER INFORMATION CONTACT: Bridget Fahey, U.S. Fish and Wildlife Service, Division of Conservation and Classification, 5275 Leesburg Pike, Falls Church, VA 22041–3803, telephone 703/358–2171. If you use a telecommunications device for the deaf, call the Federal Relay Service at 800/877–8339.

SUPPLEMENTARY INFORMATION:

Background

On October 27, 2021, the Service published a proposed rule (86 FR 59346) to rescind the final rule establishing regulations for exclusions from critical habitat that was published on December 18, 2020 (85 FR 82376), and became effective January 19, 2021. The proposed rule opened a 30-day public comment period that was scheduled to close on November 26, 2021. We subsequently received two requests to extend the public comment period. One request was submitted by the Association of Fish and Wildlife Agencies (AFWA), which sought an extension in order to coordinate and incorporate feedback from all its members into its comment. AFWA is a national organization representing State agencies in all 50 States, and the Service finds their request shows good cause to extend the comment period. With this document, we extend the public comment period for an additional 15 days, as specified above in **DATES**, to provide all interested parties an additional opportunity to comment on the October 27, 2021, proposed rule.

Public Comments

All relevant information will be considered prior to making a final determination regarding the regulations for exclusions from critical habitat. If you already submitted comments or information on the October 27, 2021, proposed rule, please do not resubmit them. Any such comments are incorporated as part of the public record of the rulemaking proceeding, and we will fully consider them in the preparation of any final rule.

You may submit your comments and materials concerning the proposed rule by one of the methods listed in **ADDRESSES**. Comments must be submitted to *https://www.regulations.gov* before 11:59 p.m. (Eastern Time) on the date specified in **DATES**. We will not consider mailed comments that are not postmarked by the date specified in **DATES**.

We will post all comments on *https://www.regulations.gov*. This generally means that we will post any personal information you provide us. If you provide personal identifying information in your comment, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Authority

We issue this document under the authority of the Endangered Species Act, as amended (16 U.S.C. 1531 *et seq*).

Shannon A. Estenoz,

Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior.

[FR Doc. 2021–25774 Filed 11–23–21; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 424

[Docket No. FWS–HQ–ES–2020–0047, FF09E23000 FXES1111090FEDR 212; Docket No. 211118–0238]

RIN 1018–BE69; 0648–BJ44

Endangered and Threatened Wildlife and Plants; Regulations for Listing Endangered and Threatened Species and Designating Critical Habitat

AGENCY: U.S. Fish and Wildlife Service, Interior; National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Proposed rule; extension of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS; hereafter collectively referred to as the ''Services'' or ''we''), are extending the comment period on our October 27, 2021, proposed rule to rescind the final rule titled ''Regulations for Listing Endangered and Threatened Species and Designating Critical Habitat'' that was published on December 16, 2020, and established a regulatory definition of the term ''habitat.'' We are extending the comment period by 15 days.

DATES: The comment period on the proposed rule that published on October 27, 2021, at 86 FR 59353, is extended. We will accept comments received or postmarked on or before December 13, 2021.

ADDRESSES: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *https://www.regulations.gov*. In the Search box, enter the docket number or RIN for this rulemaking (presented above in the document headings). For best results, do not copy and paste either number; instead, type the docket number or RIN into the Search box using hyphens. Then, click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rule box to locate this document. You may submit a comment by clicking on ''Comment.''

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS–HQ–ES–2020–0047, U.S. Fish and Wildlife Service, MS: PRB(3W), 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. Comments and materials we receive will be available for public inspection on *https://www.regulations.gov*. (See Public Comments, below, for more information.)

FOR FURTHER INFORMATION CONTACT: Bridget Fahey, U.S. Fish and Wildlife Service, Division of Conservation and Classification, 5275 Leesburg Pike, Falls Church, VA 22041–3803, telephone 703/358–2171; or Angela Somma, National Marine Fisheries Service, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910, telephone 301/427–8403. If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service at 800/877–8339.

SUPPLEMENTARY INFORMATION:

Background

On October 27, 2021, the Services published a proposed rule (86 FR 59353) to rescind the final rule establishing a regulatory definition for the term ''habitat'' that was published on December 16, 2020 (85 FR 81411) and became effective on January 15, 2021. The proposed rule opened a 30-day public comment period that was

scheduled to close on November 26, 2021. We subsequently received two requests to extend the public comment period. One request was submitted by the Association of Fish and Wildlife Agencies (AFWA), which sought an extension in order to coordinate and incorporate feedback from all its members into its comment. AFWA is a national organization representing State agencies in all 50 States, and the Services find their request shows good cause to extend the comment period. With this document, we extend the public comment period for an additional 15 days, as specified above in **DATES**, to provide all interested parties an additional opportunity to comment on the October 27, 2021, proposed rule.

Public Comments

All relevant information will be considered prior to making a final determination regarding the regulatory definition of ''habitat.'' If you already submitted comments or information on the October 27, 2021, proposed rule, please do not resubmit them. Any such comments are incorporated as part of the public record of the rulemaking proceeding, and we will fully consider them in the preparation of any final rule.

You may submit your comments and materials concerning the proposed rule by one of the methods listed in **ADDRESSES**. Comments must be submitted to *https://www.regulations.gov* before 11:59 p.m. (Eastern Time) on the date specified in **DATES**. We will not consider mailed comments that are not postmarked by the date specified in **DATES**.

We will post all comments on *https://www.regulations.gov.* This generally means that we will post any personal information you provide us. If you provide personal identifying information in your comment, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Authority

We issue this document under the authority of the Endangered Species Act, as amended (16 U.S.C. 1531 *et seq*).

Shannon A. Estenoz,

Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2021–25767 Filed 11–23–21; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 211117–0235; RTID 0648–XX072]

Fisheries of the Northeastern United States; 2022 and 2023 Summer Flounder, Scup, and Black Sea Bass Specifications

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes 2022–2023 specifications for the summer flounder, scup, and black sea fisheries. The implementing regulations for the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan require us to publish specifications for the upcoming fishing year for each of these species and to provide an opportunity for public comment. The proposed specifications are intended to establish allowable harvest levels for these species that will prevent overfishing, consistent with the most recent scientific information.

DATES: Comments must be received on or before December 9, 2021.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2021–0120, by the following method:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NMFS–2021–0120 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.

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

A Supplemental Information Report (SIR) was prepared for the 2022–2023 summer flounder, scup, and black sea bass specifciations. Copies of the SIR are available on request from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 North State Street, Dover, DE 19901. The SIR is also accessible via the internet at *https://www.mafmc.org/s/SFSBSB_2022-2023_specs_SIR_final.pdf.*

FOR FURTHER INFORMATION CONTACT: Emily Keiley, Fishery Policy Analyst, (978) 281–9116.

SUPPLEMENTARY INFORMATION:

General Background

The Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (Commission) cooperatively manage the summer flounder, scup, and black sea bass fisheries. The Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) outlines the Council's process for establishing specifications. The FMP requires NMFS to set an acceptable biological catch (ABC), annual catch limit (ACL), annual catch targets (ACT), commercial quotas, recreational harvest limits (RHL), and other management measures, for 1 to 3 years at a time. This action proposes 2022 and 2023 ABCs, as well as the recreational and commercial ACLs, ACTs, commercial quotas, and RHLs for all three species, consistent with the recommendations made by the Commission's Summer Flounder, Scup, and Black Sea Bass Board (Board) and Council at their joint August 2021 meeting.

The Scientific and Statistical Committee (SSC) met on July 22, 2021, to review the results of the 2021 management track stock assessments and recommend 2022 and 2023 ABCs for all three species; specific recommendations are discussed below.

Proposed 2021 Specifications

Summer Flounder Specifications

The Council and Board recommended 2022–2023 summer flounder catch and landings limits are shown in Table 1. The recommendations are based on the averaged 2022–2023 ABCs recommended by the SSC. This approach allows for constant catch and landings limits across both years. The ABCs are based on an SSC-modified overfishing limit (OFL) and the Council's risk policy, resulting in a 44- to 46-percent probability of overfishing. For summer flounder, this results in a 22-percent increase in the recommended 2022 and 2023 ABC over

the 2021 ABC. The proposed 2022–2023 commercial quota represents a 24-percent increase over the 2021 quota, and approximately a 35-percent increase over 2020 reported landings. The proposed 2022–2023 RHL is a 25-percent increase over the 2021 RHL.

TABLE 1—SUMMARY OF 2022 AND 2023 SUMMER FLOUNDER FISHERY SPECIFICATIONS

Specifications	Mil lb.	Metric ton
OFL	2022: 36.28 2023: 34.98	2022: 16,458 2023: 15,865
ABC	33.12	15,021
Commercial ACL = ACT	18.48	8,382
Commercial Quota	15.53	7,046
Recreational ACL = ACT	14.64	6,639
Recreational Harvest Limit	10.36	4,697

The initial 2022 state-by-state summer flounder quotas are provided in Table 2.

Through the final rule for this action, prior to the start of the fishing year, we will announce any adjustments necessary to address any long-standing overages or potential 2021 overages to provide the states with their final quotas.

TABLE 2—INITIAL 2022 SUMMER FLOUNDER STATE-BY-STATE QUOTAS

State	Initial 2022 quotas* (lb)	Initial 2022 quotas* (mt)
ME	24,488	11.11
NH	19,990	9.07
MA	1,391,846	631.33
RI	2,238,216	1,015.24
CT	956,043	433.65
NY	1,470,779	667.13
NJ	2,337,728	1,060.37
DE	21,645	9.82
MD	935,226	424.21
VA	2,776,242	1,259.28
NC	3,361,569	1,524.78
Total	15,533,771	7,045.99

* Initial quotas do not account for any previous overages.

This action makes no changes to the current commercial management measures, including the minimum fish size (14 inch (36 cm) total length), gear requirements, and possession limits. Changes to 2022 recreational management measures (bag limits, size limits, and seasons) are not considered in this action, but will be considered by the Board and Council later this year when additional data are available for 2021.

Black Sea Bass Specifications

The Council and Board recommended 2022–2023 black sea bass catch and landings limits are shown in Table 3. After reviewing the 2021 black sea bass management track stock assessment, the SSC recommended 2022–2023 ABCs based on a 100-percent OFL coefficient of variation (CV) and the Council's risk policy for a stock above 1.5 times SSB_{MSY}, with an associated 49-percent probability of overfishing, aligning with their recommendations for this species from previous years. To ensure that the probability of overfishing remained below 50 percent in each year, the SSC recommends annually varying ABCs for 2022 and 2023. They could not recommend a constant ABC across the two years based on the average of the varying ABCs as this would have resulted in a greater than 50-percent probability of overfishing in 2023. This results in a 2022 black sea bass ABC that is an 8-percent increase compared to 2021, and a 2023 ABC that is a 5-percent decrease compared to 2021. The proposed 2022 commercial quota and RHL are both 6 percent higher than the 2021 quota and RHL.

TABLE 3—2022–2023 BLACK SEA BASS CATCH AND LANDINGS LIMITS

Specifications	2022		2023	
	Mil lb.	Metric ton	Mil lb.	Metric ton
OFL	19.26	8,735	17.01	7,716
ABC	18.86	8,555	16.66	7,557
Expected Commercial Discards	3.63	1,649	3.21	1,456
Expected Recreational Discards	2.02	917	1.79	810
Commercial ACL = ACT	10.10	4,583	8.93	4,048
Commercial Quota	6.47	2,934	5.71	2,592

TABLE 3—2022–2023 BLACK SEA BASS CATCH AND LANDINGS LIMITS—Continued

Specifications	2022		2023	
	Mil lb.	Metric ton	Mil lb.	Metric ton
Recreational ACL = ACT	8.76	3,972	7.74	3,509
RHL	6.74	3,055	5.95	2,699

This action proposes no changes to the 2022 commercial management measures for black sea bass, including the commercial minimum fish size (11 inch (27.94 cm) total length) and gear requirements.

Scup Specifications

The Council and Board recommended 2022–2023 scup catch and landings limits are shown in Table 4. The SSC recommended 2022–2023 ABCs based on a 60-percent OFL CV (as they have used for this species in previous years) and the Council's risk policy for a stock above 1.5 times SSB_{MSY}, with an associated 49-percent probability of overfishing. Similar to black sea bass, to ensure that the probability of overfishing remained below 50 percent in each year, the SSC recommend annually varying ABCs for 2022 and 2023. This results in a proposed 2022 ABC that is 8 percent less than the 2021 ABC; the proposed 2023 ABC is 15 percent less than the 2021 ABC. The proposed scup commercial quotas for 2022 and 2023 represent a less than 1-percent decrease and a 13-percent decrease respectively from 2021. However, scup quotas have not been constraining since 2007 and recent landings are less than the proposed quotas. The proposed 2022 RHL is less than 1 percent greater than the 2021 RHL.

TABLE 4—2022–2023 SCUP CATCH AND LANDINGS LIMITS

Specifications	2022		2023	
	Mil lb.	Metric ton	Mil lb.	Metric ton
OFL	32.56	14,770	30.09	13,648
ABC	32.11	14,566	29.67	13,460
Expected Commercial Discards	4.67	2,117	5.28	2,394
Expected Recreational Discards	0.99	447	1.12	506
Commercial ACL = ACT	25.05	11,361	23.15	10,499
Commercial Quota	20.38	9,245	17.87	8,105
Recreational ACL = ACT	7.06	3,205	6.53	2,961
RHL	6.08	2,757	5.41	2,455

The commercial scup quota is divided into three commercial fishery quota periods, as outlined in Table 5.

TABLE 5—COMMERCIAL SCUP QUOTA ALLOCATIONS FOR 2020 BY QUOTA PERIOD

Quota period	Percent share	lb	mt
Winter I	45.11	9,194,201	4,170
Summer	38.95	7,938,686	3,601
Winter II	15.94	3,248,849	1,474
Total	100.0	20,381,736	9,245

The current quota period possession limits are not changed by this action, and are outlined in Table 6.

TABLE 6—COMMERCIAL SCUP POSSESSION LIMITS BY QUOTA PERIOD

Quota period	Percent share	Federal possession limits (per trip)	
		lb	kg
Winter I	45.11	50,000	22,680
Summer	38.95	N/A	N/A
Winter II	15.94	12,000	5,443
Total	100.0	N/A	N/A

The Winter I possession limit will drop to 1,000 lb (454 kg) when 80 percent of that period's allocation is landed. If the Winter I quota is not fully harvested, the remaining quota is transferred to Winter II. The Winter II possession limit may be adjusted (in association with a transfer of unused Winter I quota to the Winter II period) via notice in the **Federal Register**. The regulations specify that the Winter II possession limit increases consistent with the increase in the quota, as described in Table 7.

TABLE 7—POTENTIAL INCREASE IN WINTER II POSSESSION LIMITS BASED ON THE AMOUNT OF UNUSED SCUP ROLLED OVER FROM WINTER I TO WINTER II

Initial Winter II possession limit		Rollover from Winter I to Winter II		Increase in initial Winter II possession limit		Final Winter II possession limit after rollover from Winter I to Winter II	
lb	kg	lb	kg	lb	kg	lb	kg
12,000	5,443	0–499,999	0–226,796	0	0	12,000	5,443
12,000	5,443	500,000–999,999	226,796–453,592	1,500	680	13,500	6,123
12,000	5,443	1,000,000–1,499,999	453,592–680,388	3,000	1,361	15,000	6,804
12,000	5,443	1,500,000–1,999,999	680,389–907,184	4,500	2,041	16,500	7,484
12,000	5,443	*2,000,000–2,500,000	907,185–1,133,981	6,000	2,722	18,000	8,165

*This process of increasing the possession limit in 1,500 lb (680 kg) increments would continue past 2,500,000 lb (1,122,981 kg), but we end here for the purpose of this example.

This action proposes no changes to the 2022 commercial management measures for scup, including the minimum fish size (9 inch (22.9 cm) total length), gear requirements, and quota period possession limits. As with summer flounder and black sea bass, potential changes to the recreational measures (bag limits, size limits, and seasons) for 2022 will be considered later this year when additional data are available for 2021.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Summer Flounder, Scup, and Black Sea Bass FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule is exempt from review under Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows.

The Mid-Atlantic Fishery Management Council conducted an evaluation of the potential socioeconomic impacts of the proposed measures in conjunction with a SIR. The proposed action would set the 2022 and projected 2023 catch and landings limits for summer flounder, scup, and black sea bass based on the recommendations of the SSC, the Council, and Board. The proposed 2022–2023 specifications are an increase for summer flounder in both years and black sea bass in 2022, compared to the 2021 quotas. The 2022–2023 scup specification are lower than 2021, but commercial scup landings appear to be influenced by market conditions, and landings have been lower than the quota since 2007. No changes to the Federal commercial fishery management measures are being proposed. Recreational fishery management measures are developed in a separate action.

Vessel ownership data were used to identify all individuals who own fishing vessels. Vessels were then grouped according to common owners. The resulting groupings were then treated as entities, or affiliates, for purposes of identifying small and large businesses which may be affected by this action. Affiliates were identified as primarily commercial fishing affiliates if the majority of their revenues in 2020 came from commercial fishing. Some of these affiliates may have also held party/charter permits. Affiliates were identified as primarily for-hire fishing affiliates if the majority of their revenues in 2020 came from for-hire fishing. Some of these affiliates may have also held commercial permits.

Based on this grouping, a total of 711 commercial affiliates reported revenue from summer flounder, scup, and/or black sea bass landings in at least one year during 2018–2020. Based on combined receipts in 2020, 706 (99 percent) of these commercial affiliates were classified as small businesses and 5 (1 percent) were classified as large businesses.

A total of 361 affiliates reported that the majority of their revenues in 2020 came from for-hire fishing. Some of these affiliates may have also participated in commercial fishing. All 361 of the for-hire affiliates were categorized as small businesses based on their 2020 revenues. It is not possible to determine the proportion of their revenues that came from fishing for an individual species. However, given the popularity of summer flounder, scup, and black sea bass as recreational species in the Mid-Atlantic and southern New England, revenues generated from these species are likely important for many of these firms at certain times of the year.

The 706 potentially impacted commercial fishing small business affiliates had average total annual revenues of $634,503, and an average of $52,227 in annual revenues from commercial landings of summer flounder, scup and/or black sea bass during 2018–2020. On average, these species accounted for 8 percent of the total revenues for these 706 small business affiliates.

The five potentially impacted large business affiliates had average total annual revenues of $82.8 million and $438,853 on average in annual revenues from commercial landings of summer flounder, scup, and/or black sea bass during 2018–2020. On average, these species accounted for less than 1 percent of the total revenues for these five large business affiliates.

The proposed action for summer flounder is expected to result in a slight to moderate increase in commercial landings compared to current levels. The proposed 2022–2023 commercial quota represents a 24-percent increase over the 2021 quota, and approximately a 35-percent increase over 2020 reported landings.

The proposed action for scup is expected to result in similar levels of commercial landings and revenues as

the past several years. Commercial scup landings appear to be influenced more by market factors than the annual commercial quota. The proposed scup quotas for 2022 (20.38 million lb, 9,244 metric tons) and 2023 (17.87 million lb, 8,105 metric tons) represent a less than 1-percent decrease and a 13-percent decrease from 2021 (20.50 million lb, 9,298 metrictons), respectively. However commercial landings have been lower than the quotas since 2007, and recent landings are lower than the proposed 2022 and 2023 quotas. In general, the proposed 2022–2023 scup quotas are expected to have moderate positive impacts for both the small and large commercial fishing business identified above because they are expected to result in revenues similar to those over the past several years.

The proposed action for black sea bass is expected to have generally moderate positive socioeconomic impacts for all participants because it would allow for commercial landings and revenues that are similar to recent years. For example, the proposed 2022 quota (6.47 million lb, 2,934 metric tons) is 6 percent higher than the 2021 quota (6.09 million lb, 2,762 metric tons) and the proposed 2023 quota is 6 percent lower than the 2021 quota.

This action does not consider changes to recreational management measures.

As result, this action is not expected to adversely impact revenues for commercial and recreational vessels that fish for summer flounder, scup, and, black sea bass. Because this rule will not have a significant economic impact on a substantial number of small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

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

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

Dated: November 17, 2021.

Samuel D. Rauch, III,

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

[FR Doc. 2021–25394 Filed 11–23–21; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 86, No. 224

Wednesday, November 24, 2021

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

Animal and Plant Health Inspection Service

[Docket No. APHIS–2021–0057]

Addition of the Kingdom of Bhutan to the List of Regions Affected With African Swine Fever

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that we have added the Kingdom of Bhutan to the list of regions that the Animal and Plant Health Inspection Service considers to be affected with African swine fever (ASF). We have taken this action because of confirmation of ASF in the Kingdom of Bhutan.

DATES: The Kingdom of Bhutan was added to the APHIS list of regions considered affected with ASF on June 2, 2021.

FOR FURTHER INFORMATION CONTACT: Dr. John Grabau, Regionalization Evaluation Services, Veterinary Services, APHIS, 920 Main Campus Drive, Venture II, Raleigh, NC 27606; Phone: (919) 855–7738; email: *AskRegionalization@usda.gov.*

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation of specified animals and animal products to prevent introduction into the United States of various animal diseases, including African swine fever (ASF). ASF is a highly contagious animal disease of wild and domestic swine. It can spread rapidly in swine populations with extremely high rates of morbidity and mortality. A list of regions where ASF exists or is reasonably believed to exist is maintained on the Animal and Plant Health Inspection Service (APHIS) website at *https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/animal-and-animal-product-import-information/animal-health-status-of-regions/*. This list is referenced in § 94.8(a)(2) of the regulations.

Section 94.8(a)(3) of the regulations states that APHIS will add a region to the list referenced in § 94.8(a)(2) upon determining ASF exists in the region, based on reports APHIS receives of outbreaks of the disease from veterinary officials of the exporting country, from the World Organization for Animal Health (OIE), or from other sources the Administrator determines to be reliable, or upon determining that there is reason to believe the disease exists in the region. Section 94.8(a)(1) of the regulations specifies the criteria on which the Administrator bases the reason to believe ASF exists in a region. Section 94.8(b) prohibits importation of pork and pork products from regions listed in accordance with § 94.8, except if processed and treated in accordance with the provisions specified in that section or consigned to an APHIS-approved establishment for further processing. Section 96.2 restricts the importation of swine casings that originated in or were processed in a region where ASF exists, as listed under § 94.8(a).

On May 27, 2021, the veterinary authorities of the Kingdom of Bhutan reported to the OIE the occurrence of ASF in that country. Therefore, in response to this outbreak, on June 2, 2021, APHIS added the Kingdom of Bhutan to the list of regions where ASF exists or is reasonably believed to exist. This notice serves as an official record and public notification of that action.

As a result, pork and pork products from the Kingdom of Bhutan, including casings, are subject to APHIS import restrictions designed to mitigate the risk of ASF introduction into the United States.

Congressional Review Act

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

Authority: 7 U.S.C. 1633, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 18th day of November 2021.

Jack Shere,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2021–25611 Filed 11–23–21; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

[OMB No. 0596–0189]

Information Collection; Understanding Value Trade-Offs Regarding Fire Hazard Reduction Programs in the Wildland-Urban Interface

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the renewal of a currently approved information collection, Understanding Value Trade-offs regarding Fire Hazard Reduction Programs in the Wildland-Urban Interface.

DATES: Comments must be received in writing on or before January 24, 2022 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to José Sánchez, USDA Forest Service, Pacific Southwest Research Station, 4955 Canyon Crest Drive, Riverside, California 92507. Comments may also be submitted via facsimile to 951–680–1501, or by email to *jose.sanchez2@usda.gov.*

The public may inspect comments received at the Pacific Southwest Research Station, during normal business hours. Visitors are encouraged to call ahead to facilitate entry to the building at 951–680–1560.

FOR FURTHER INFORMATION CONTACT: José Sánchez, by phone at 951–680–1560. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 twenty-four hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Understanding Value Trade-offs Regarding Fire Hazard Reduction Programs in the Wildland-Urban Interface.

OMB Number: 0596–0189.

Expiration Date of Approval: February 28, 2022.

Type of Request: Renewal.

Abstract: Forest Service and university researchers will collect information from members of the public via a brief phone questionnaire followed by the respondent's choice of a mail questionnaire or an online questionnaire to help forest and fire managers understand value trade-offs regarding fire hazard reduction programs in the wildland-urban interface. Researchers will evaluate the responses of Florida, New Mexico, Oregon, and Texas residents to different scenarios related to fire-hazard reduction programs, determine how effective residents think the programs are, and calculate how much residents would be willing to pay to implement the alternatives presented to them. This information will help researchers provide better information to natural resource, forest, and fire managers when they are contemplating the type of fire-hazard reduction program to implement to achieve forestland management planning objectives.

A random sample of residents of Florida, New Mexico, Oregon, and Texas will be contacted via random-digit dialed telephone calls and asked to participate in the research study. If they are willing to participate in the study, they will select to receive an online or paper questionnaire and will provide the appropriate address. Though different forms, these questionnaires have the same set of questions. In this initial call, we will also ask those willing to participate a brief set of questions to determine pre-existing knowledge of fuels reduction treatments. After completion of the mail or online questionnaire, no further contact with the participants will occur.

A university research-survey center will collect the information for the mail and online questionnaires. A Forest Service researcher and collaborators at a cooperating university will analyze the data collected. Researchers are experienced in applied economic non-market valuation research and survey research methods.

The Forest Service, Bureau of Land Management, Bureau of Indian Affairs, National Park Service, Fish and Wildlife Service, as well as many state agencies with fire protection responsibilities will benefit from this information collection. At present, many of these agencies with fire protection responsibilities continue an ambitious and costly fuels reduction program for fire risk reduction and will benefit from public opinion on which treatments are most effective or desirable.

Estimate of Annual Burden per Respondent: 40 minutes.

Type of Respondents: Members of the public.

Estimated Annual Number of Respondents: 1,675.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 690 hours.

Comment is Invited: Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) 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, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Alexander L. Friend,

Deputy Chief, Research & Development.

[FR Doc. 2021–25636 Filed 11–23–21; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

National Institute of Food and Agriculture

Notice of Intent To Extend Currently Approved Information Collection

AGENCY: National Institute of Food and Agriculture, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and Office of Management and Budget (OMB) regulations, this notice announces the National Institute of Food and Agriculture's (NIFA) intention to extend a previously approved information collection, Form NIFA–666, entitled ''*Organizational Information.*''

DATES: Written comments on this notice must be received by January 24, 2022 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: You may submit comments through the Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

Instructions: All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Robert Martin, 202–445–5388, *Robert.martin3@usda.gov*.

SUPPLEMENTARY INFORMATION:

Title of Collection: Organizational Information.

OMB Control Number: 0524–0026.

Expiration Date of Current Approval: 01/31/2022.

Type of Request: Notice of intent to extend a currently approved information collection. The burden for this collection remains unchanged.

NIFA is requesting a three-year extension for the current collection entitled ''Organizational Information.''

Abstract: NIFA has primary responsibility for providing linkages between the Federal and State components of a broad-based, national agricultural research, extension, and education system. Focused on national issues, its purpose is to represent the Secretary of Agriculture and carry out the intent of Congress by administering capacity and grant funds appropriated for agricultural research, extension, and education. Before awards can be made, certain information is required from applicants to effectively assess the potential recipient's capacity to manage Federal funds. Form NIFA–666 ''Organizational Information,'' enables NIFA to determine that the applicants recommended for awards will be responsible recipients of Federal funds.

The information requested from the applicant pertains to the organizational and financial management of the potential grantee. This form and the attached applicant documents provide NIFA with information such as the legal name of the organization, certification that the organization has the legal authority to accept Federal funding, identification and signatures of the key officials, the organization's policies for employee compensation and benefits, equipment insurance, policies on subcontracting with other organizations, etc., as well as the financial condition of the organization and certification that the organization is not delinquent on

Federal taxes. NIFA considers all of this information prior to award, to determine the grantee is both managerially and fiscally responsible. This information is submitted to NIFA on a one-time basis and updated accordingly. If sufficient changes occur within the organization, the grantee submits revised information.

Estimated Number of Respondents: 150.

Estimated Burden per Response: 6.3 hours.

Estimated Total Annual Burden on Respondents: 945 hours.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) 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.

All responses to this notice will be summarized and included in the request to OMB for approval. All comments will become a matter of public record.

Obtaining a Copy of the Information Collection: A copy of the information collection and related instructions may be obtained free of charge by contacting Robert Martin as directed above.

Done at Washington, DC, this day of November 18, 2021.

Carrie L. Castille,

Director, National Institute of Food and Agriculture, U.S. Department of Agriculture.

[FR Doc. 2021–25668 Filed 11–23–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

National Institute of Food and Agriculture

Notice of Intent To Extend and Revise Currently Approved Information Collection

AGENCY: National Institute of Food and Agriculture, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and Office of Management and Budget (OMB) regulations, this notice announces the National Institute of Food and Agriculture's (NIFA) intention to extend and revise a previously approved information collection, entitled *NIFA Application Kit.* This information collection replaces an existing information collection, also entitled *NIFA Application Kit.*

DATES: Written comments on this notice must be received by January 24, 2022 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: You may submit comments through the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Robert Martin, 202–445–5388, *Robert.martin3@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title of Collection: NIFA Application Kit.

OMB Control Number: 0524–0039.

Expiration Date of Current Approval: 12/31/2021.

Type of Request: Notice of intent to extend and revise a currently approved information collection. The burden for this collection remains unchanged.

NIFA is requesting a three-year extension for the current collection entitled ''NIFA Application Kit.''

NIFA is also proposing non-substantive updates to the existing ''Application Type Form'' to reflect all grant types currently available. The form will be modified to include ''New Investigator Seed'' as an additional option under ''Grant Type.''

Abstract: The National Institute of Food and Agriculture (NIFA) sponsors ongoing agricultural research, extension, and education programs under which competitive, formula, and special awards of a high-priority nature are made. Because competitive applications are submitted, many of which necessitate review by peer panelists, it is particularly important that applicants provide the information in a standardized fashion to ensure equitable treatment for all.

Standardization is also important to applicants to other programs as it lends itself to a more efficient process and minimizes administrative burden. For this reason, NIFA uses standard forms in the SF–424 Research and Related (R&R) form family which includes agency-specific forms for the application process. NIFA issues Requests for Application (RFAs) that includes the instructions for the preparation and submission of applications. These instructions provide, where appropriate, the necessary format for information in order to expedite, to the extent possible, the application review process. NIFA requires submission of applications electronically through *Grants.gov.*

The forms and narrative information are mainly used for application evaluation and administration purposes. While some of the information is used to respond to inquiries from Congress and other government agencies, the forms are not designed to be statistical surveys.

Also included in this information collection is one form *which* only applies to recipients of a NIFA fellowship/scholarship. The form is only used to document pertinent demographic data on the fellows/scholars, documentation of the progress of the fellows/scholars under the program, and performance outcomes of the student beneficiaries.

Respondents: Universities, non-profit institutions, State, local, or Tribal government, and a limited number of for- profit institutions and individuals.

Estimated Number of Respondents by form:

Letter of Intent: 2,739.

Form NIFA–2008 Assurance Statement(s): 2,000.

Supplemental Information: 5,377.

Application Type: 2,200.

Proposal Type Form: 2,687.

NIFA–2010 Fellowships/Scholarships Entry/Exit: 150.

The individual form burden is as follows (calculated based on a survey of grant applicants conducted by NIFA):

Letter of Intent: 2 hours.

Form NIFA–2008 Assurance Statement(s): 30 minutes.

Supplemental Information: 2 hours.

Application Type: 15 minutes.

Proposal Type Form: 15 minutes.

NIFA–2010 Fellowships/Scholarships Entry/Exit: 3 hours.

Estimated Total Annual Burden on the public for all forms: 18,354 hours.

Frequency of Respondents: Annually.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) 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.

All responses to this notice will be summarized and included in the request to OMB for approval. All comments will become a matter of public record.

Obtaining a Copy of the Information Collection: A copy of the information collection and related instructions may be obtained free of charge by contacting Robert Martin as directed above.

Done at Washington, DC, this day of November 18, 2021.

Carrie L. Castille,

Director, National Institute of Food and Agriculture, U.S. Department of Agriculture.

[FR Doc. 2021–25665 Filed 11–23–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–78–2021]

Foreign-Trade Zone (FTZ) 18—San Jose, California Notification of Proposed Production Activity Innovusion, Inc. (Light Detection and Ranging Systems) Sunnyvale, California

Innovusion, Inc. (Innovusion) submitted a notification of proposed production activity to the FTZ Board (the Board) for its facility in Sunnyvale, California under FTZ 18. The notification conforming to the requirements of the Board's regulations (15 CFR 400.22) was received on November 12, 2021.

Pursuant to 15 CFR 400.14(b), FTZ production activity would be limited to the specific foreign-status material(s)/component(s) and specific finished product(s) described in the submitted notification (summarized below) and subsequently authorized by the Board. The benefits that may stem from conducting production activity under FTZ procedures are explained in the background section of the Board's website—accessible via *www.trade.gov/ftz.*

The proposed finished products include light detection and ranging systems (duty rate is duty-free).

The proposed foreign-status materials and components include: Stainless steel or non-extrusion aluminum housings, brackets, mounts, baffles, spacers, clamps, rings, bushings, shields, covers; unground ball bearings; cables and wires with connectors; encoders; electronic integrated circuits; fiber lasers; neodymium rare earth block magnets; brushless electric motors and generators; O-rings; optical fiber cables and cable bundles; optical transceivers; printed circuit board splices and couplings; populated printed circuit board assemblies; stators and rotors for motors; transmission shafts; tempered glass windows; and, multi-faceted mirror mounted on mechanical bases (duty rate ranges from duty-free to 9.0%). The request indicates that certain materials/components are subject to duties under Section 301 of the Trade Act of 1974 (Section 301), depending on the country of origin. The applicable Section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is January 3, 2022.

A copy of the notification will be available for public inspection in the ''Online FTZ Information System'' section of the Board's website.

For further information, contact Juanita Chen at *juanita.chen@trade.gov.*

Dated: November 18, 2021.

Camille R. Evans,

Acting Executive Secretary.

[FR Doc. 2021–25656 Filed 11–23–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–038, C–570–039]

Certain Amorphous Silica Fabric Between 70 and 90 Percent Silica, From the People's Republic of China: Initiation of Circumvention Inquiry of Antidumping and Countervailing Duty Orders—70–90 Percent Amorphous Silica Fabric

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In response to allegations of circumvention from Auburn Manufacturing, Inc. (AMI), the Department of Commerce (Commerce) is initiating a country-wide circumvention inquiry to determine whether imports of certain amorphous silica fabric with 70–90 percent silica content (70–90 percent ASF) from the People's Republic of China (China) are circumventing the antidumping duty (AD) and countervailing duty (CVD) orders on certain amorphous silica fabric with a silica content of at least 90 percent from China.

DATES: Effective November 24, 2021.

FOR FURTHER INFORMATION CONTACT: Margaret Collins, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6250.

SUPPLEMENTARY INFORMATION:

Background

On August 20, 2021, Auburn Manufacturing, Inc. (AMI), the petitioner in the AD and CVD investigations, requested that Commerce initiate circumvention inquiries with regard to 70–90 percent ASF that is exported to the United States from China.[1] The petitioner alleges that 70–90 percent ASF constitutes merchandise altered in form or appearance in such minor respects that it should be included within the scope of the *Orders,*[2] pursuant to section 781(c) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.225(i). In addition, the petitioner alleges that 70–90 percent ASF is later-developed merchandise and should be included within the scope of the *Orders,* pursuant to section 781(d) of the Act and 19 CFR 351.225(j). No interested parties submitted comments in response to this request for an inquiry.

Scope of the Orders

The product subject to these *Orders* is amorphous silica fabric with silica content of at least 90 percent from China. For a complete description of the scope of the *Orders,* see the Initiation Decision Memorandum dated concurrently with this notice.[3]

Merchandise Subject to the Circumvention Inquiry

This circumvention inquiry covers amorphous silica fabric with silica content between 70 and 90 percent produced in China and exported to the United States.

Legal Framework

Section 781(c) of the Act provides that Commerce may find circumvention of an AD or CVD order when merchandise of the same class or kind as

[1] *See* Petitioner's Letter, ''Certain Amorphous Silica Fabric from the People's Republic of China: Request for Anti-Circumvention Inquiry,'' dated August 20, 2021.

[2] *See Certain Amorphous Silica Fabric from the People's Republic of China: Antidumping Duty Order,* 82 FR 14314 (March 17, 2017); *see also Certain Amorphous Silica Fabric from the Peoples' Republic of China: Countervailing Duty Order,* 82 FR 14316 (March 27, 2017) (*Orders*).

[3] *See* Memorandum, ''Decision Memorandum for Initiation of Anti-Circumvention Inquiry,'' dated concurrently with and hereby adopted by this notice (Initiation Decision Memorandum).

merchandise has been ''altered in form or appearance in minor respects . . . whether or not included in the same tariff classification.'' Section 781(c)(2) of the Act provides an exception that ''{p}aragraph 1 shall not apply with respect to altered merchandise if the administering authority determines that it would be unnecessary to consider the altered merchandise within the scope of the {order}.'' While the Act is silent regarding the factors to consider in determining whether alterations are properly considered ''minor,'' the legislative history of this provision indicates that there are certain factors that should be considered before reaching a circumvention determination. In conducting a circumvention inquiry under section 781(c) of the Act, Commerce has generally relied upon ''such criteria as the overall physical characteristics of the merchandise, the expectations of the ultimate users, the use of the merchandise, the channels of marketing and the cost of any modification relative to the total value of the imported products.'' [4] Concerning the allegation of minor alteration under section 781(c) of the Act and 19 CFR 351.225(i), Commerce examines such factors as: (1) Overall physical characteristics; (2) expectations of ultimate users; (3) use of merchandise; (4) channels of marketing; and, (5) cost of any modification relative to the value of the imported products.[5]

Section 781(d) of the Act provides that Commerce may initiate an circumvention inquiry to determine whether merchandise developed after an AD or CVD investigation is within the scope of the order(s). In conducting later-developed merchandise inquiries under section 781(d)(1) of the Act, Commerce will evaluate whether: (1) The general physical characteristics of the merchandise subject to the inquiry are the same as subject merchandise covered by the order(s); (2) the expectations of the ultimate purchasers of the merchandise subject to the inquiry are no different to the expectations of the ultimate purchasers of subject merchandise; (3) the ultimate use of the inquiry merchandise and subject merchandise are the same; (4) the channels of trade of both products are the same; and, (5) there are any differences in the advertisement and display of both products.[6] First, however, Commerce applies a commercial availability test to determine whether the merchandise subject to the inquiry was commercially available at the time of the investigation(s) (*i.e.,* the product was present in the commercial market or the product was tested and ready for commercial production).[7]

Analysis

After analyzing the record evidence and the petitioner's allegation, we determine that there is sufficient information to warrant the initiation of a minor alterations circumvention inquiry, pursuant to section 781(c) of the Act and 19 CFR 351.225(i). However, we determine that initiation of a later-developed merchandise circumvention inquiry, pursuant to section 781(d) of the Act and 19 CFR 351.225(j), is not warranted. For a full discussion of the basis for our decision to initiate a minor alterations circumvention inquiry, but not a later-developed merchandise circumvention inquiry, *see* the Initiation Decision Memorandum. The Initiation Decision Memorandum is a public document, 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 Initiation Decision Memorandum can be accessed directly at *http://access.trade.gov/public/FRNoticesListLayout.aspx.*

Conclusion

Commerce will determine whether the merchandise subject to the inquiry (as described in the ''Merchandise Subject to the Anti-Circumvention Inquiry'' section above) is circumventing the *Orders* such that it should be included within the scope of the *Orders,* pursuant to section 781(c) of the Act and 19 CFR 351.225(i).

In accordance with 19 CFR 351.225(l)(2), if Commerce issues a preliminary affirmative determination, we will then instruct U.S. Customs and Border Protection to suspend liquidation and require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the merchandise at issue entered or withdrawn from warehouse for consumption on or after the date of publication in the **Federal Register** of the initiation of the inquiry.

Commerce will establish a schedule for questionnaires and comments on the issues related to the inquiry. In accordance with section 781(f) of the Act, to the maximum extent practicable, Commerce intends to issue its final determination within 300 days of the date of publication of this initiation.

Notification to Interested Parties

This notice is published in accordance with sections 781(c) of the Act and 19 CFR 351.225(i).

Dated: November 18, 2021.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, Performing the Non-Exclusive Functions and Duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2021–25657 Filed 11–23–21; 8:45 am]

BILLING CODE 3510–DS–P

[4] *See Carbon and Certain Alloy Steel Wire Rod from Mexico: Initiation of Anti-Circumvention Inquiry of Antidumping Duty Order,* 83 FR 5405 (February 7, 2018) (citing S. Rep. No. 71, 100th Cong., 1st Sess. 100 (1987)).

[5] *Id.; see also Deacero S.A. de C.V.* v. *United States,* 817 F.3d 1332 (Fed. Cir. 2016).

[6] *See* section 781(d)(1) of the Act.

[7] *See Later-Developed Anticircumvention Inquiry of the Antidumping Duty Order on Petroleum Wax Candles from the People's Republic of China: Affirmative Preliminary Determination of Circumvention of Antidumping Duty Order,* 71 FR 32033, 32035 (June 2, 2006), unchanged in *Later-Developed Merchandise Anticircumvention Inquiry of the Antidumping Duty Order on Petroleum Wax Candles from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order,* 71 FR 59075 (October 6, 2006).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB048]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to the U.S. Coast Guard's Alaska Facility Maintenance and Repair Activities

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

ACTION: Notice; receipt of application for Letter of Authorization; request for comments and information.

SUMMARY: NMFS has received a request from the U.S. Coast Guard for authorization to take small numbers of marine mammals incidental to conducting construction activities related to maintenance and repair of eight of their facilities in Alaska over the course of five years from the date of issuance. Pursuant to regulations implementing the Marine Mammal Protection Act (MMPA), NMFS is announcing receipt of the U.S. Coast Guard's request for the development and implementation of regulations governing the incidental taking of marine mammals. NMFS invites the public to provide information, suggestions, and comments on the application and request.

DATES: Comments and information must be received no later than December 27, 2021.

ADDRESSES: Comments on the applications should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Electronic comments should be sent to *ITP.Meadows@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-cooonstruction-activities* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Dr. Dwayne Meadows, Office of Protected Resources, NMFS, (301) 427–8401. An electronic copy of the U.S. Coast Guard's application may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

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 issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An incidental take authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 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.

The MMPA states that the term ''take'' means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, 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).

Summary of Request

On March 15, 2021, NMFS received an application from the U.S. Coast Guard (Coast Guard) requesting authorization for take of marine mammals incidental to maintenance and repair of eight of their facilities in Alaska. After the applicant responded to our questions, we determined the application was adequate and complete on November 17, 2021. The requested regulations would be valid for 5 years, from April 1, 2022 through March 31, 2027. The Coast Guard plans to conduct necessary work, including impact and vibratory pile driving and removal, making holes using down-the-hole equipment, pile cutting and power washing to maintain and repair their dock and other facilities. The proposed action may incidentally expose marine mammals occurring in the vicinity to elevated levels of underwater sound, thereby resulting in incidental take, by Level A and/or Level B harassment only. Therefore, the Coast Guard requests authorization to incidentally take marine mammals.

Specified Activities

The Coast Guard proposes to conduct construction necessary for maintenance and repair of existing in-water structures at the following eight Coast Guard station facilities in Alaska: Kodiak, Sitka, Ketchikan, Valdez, Cordova, Juneau, Petersburg, and Seward. Up to 246 piles will be removed and replaced on a 1 to 1 basis over the 5-year regulations. The Coast Guard anticipates a maximum of 395 work days over the course of the 5-year period and they expect to take 23 stocks from 12 species of marine mammals.

Information Solicited

Interested persons may submit information, suggestions, and comments concerning the Coast Guard's request (see **ADDRESSES**). NMFS will consider all information, suggestions, and comments related to the request during the development of proposed regulations governing the incidental taking of marine mammals by the Coast Guard, if appropriate.

Dated: November 18, 2021.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB598]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Parallel Thimble Shoal Tunnel Project in Virginia Beach, Virginia

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with 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 the Chesapeake Tunnel Joint Venture (CTJV) to incidentally harass, by Level A and Level B harassment only, marine mammals during construction activities associated with the Parallel Thimble Shoal Tunnel Project (PTST) in Virginia Beach, Virginia.

DATES: This authorization is effective for one year from the date of issuance.

FOR FURTHER INFORMATION CONTACT: Dwayne Meadows, Ph.D., Office of Protected Resources, NMFS, (301) 427–8401. 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/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed above.

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 issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be 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 mitigation, monitoring and reporting of the takings are set forth.

The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

Summary of Request

On September 21, 2021, NMFS received an application from CTJV requesting an IHA to take small numbers of five species (harbor seal (*Phoca vitulina*), gray seal (*Halichoerus grypus*), bottlenose dolphin (*Tursiops truncatus*), harbor porpoise (*Phocoena phocoena*) and humpback whale (*Megaptera novaeangliae*)) of marine mammals incidental to pile driving and removal associated with the PTST Project. The application was deemed adequate and complete on September 30, 2021. CTJV's request is for take of a small number of these species by Level A or Level B harassment. Neither CTJV nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate. NMFS previously issued IHAs to CTJV for similar work (83 FR 36522; July 30, 2018; 85 FR 16061; March 20, 2020; and 86 FR 14606; March 17, 2021). However, due to design and schedule changes only a small portion of that work was conducted under those issued IHAs. This proposed IHA covers one year of a five year project.

Description of Specified Activity

Overview

The purpose of the project is to build an additional two-lane vehicle tunnel under the navigation channel as part of the Chesapeake Bay Bridge and Tunnel (CBBT). The PTST project will address existing constraints to regional mobility based on current traffic volume, improve safety, improve the ability to conduct necessary maintenance with minimal impact to traffic flow, and ensure reliable hurricane evacuation routes. In-water pile driving is needed to create vessel moorings, temporary work trestles and Support of Excavation walls on islands at either end of the tunnel. The work in this application involves the installation of 722 36-inch and 42 42-inch steel piles. The project will take no more than 252 days of in-water pile work. A detailed description of the planned project is provided in the **Federal Register** notice for the proposed IHA (86 FR 56902; October 13, 2021). Since that time, no changes have been made to the planned activities. Therefore, a detailed description is not provided here. Please refer to that **Federal Register** notice for the description of the specific activity.

Comments and Responses

A notice of NMFS's proposal to issue an IHA to CTJV was published in the **Federal Register** on October 13, 2021 (86 FR 56902). That notice described, in detail, CTJV's activity, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals. During the 30-day public comment period, NMFS received one public comment from a member of the public who was completely supportive of the project with no substantive comments.

Changes From the Proposed IHA

Since publication of the proposed IHA, NMFS has published the draft 2021 Stock Assessment Report (SAR, *https://media.fisheries.noaa.gov/2021-10/Draft%202021%20NE%26SE%20SARs.pdf*). The SAR provides updated information for harbor porpoise, harbor seal, and gray seal that does not affect our analysis or findings (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 behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS's SARs (*https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS's website (*https://www.fisheries.noaa.gov/find-species*).

Table 1 lists all species with expected potential for occurrence in the project area in Chesapeake Bay 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. For taxonomy, we follow Committee on Taxonomy (2020). 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's SARs). While no 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 and other threats. As noted above, the recent draft SAR provides updated information for three species. Harbor porpoise mortality and serious injury declined slightly. Harbor seal abundance declined by about 15 percent and gray seal abundance increased slightly. Other parameters also had minor changes, see Table 1 for the revised information.

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's stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS's U.S. Atlantic SARs (*e.g.,* Hayes *et al.,* 2021; draft 2021 SAR).

TABLE 1—SPECIES THAT SPATIALLY CO-OCCUR WITH THE ACTIVITY TO THE DEGREE THAT TAKE IS REASONABLY LIKELY TO OCCUR

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Balaenopteridae (rorquals):						
Humpback whale	*Megaptera novaeangliae*	Gulf of Maine	-,-; N	1,393 (0; 1,375, 2016)	22	58
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae:						
Bottlenose dolphin	*Tursiops truncatus*	WNA Coastal, Northern Migratory.	-,-; Y	6,639 (0.41; 4,759; 2011)	48	12.2–21.5
		WNA Coastal, Southern Migratory.	-,-; Y	3,751 (0.06; 2,353; 2011)	23	0–8
		Northern North Carolina Estuarine System.	-,-; Y	823 (0.06; 782; 2017)	7.8	7.2–30
Family Phocoenidae (porpoises):						
Harbor porpoise	*Phocoena phocoena*	Gulf of Maine/Bay of Fundy	-, -; N	95,543 (0.31; 74,034; 2016)	851	164
Order Carnivora—Superfamily Pinnipedia						
Family Phocidae (earless seals):						
Harbor seal	*Phoca vitulina*	WNA	-; N	61,336 (0.08; 57,637, 2018)	1729	339
Gray seal [4]	*Halichoerus grypus*	WNA	-; N	27,300 (0.22, 22,785, 2016)	1,359	4,453

[1] 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.

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

[3] 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/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.

[4] The NMFS stock abundance estimate applies to U.S. population only, however the actual stock abundance is approximately 505,000. The PBR value is estimated for the U.S. population, while the M/SI estimate is provided for the entire gray seal stock (including animals in Canada).

A detailed description of the of the species likely to be affected by project, 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 **Federal Register** notice for the proposed IHA (86 56902; October 13, 2021); 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 that **Federal Register** notice 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 underwater noise from CTJV's construction activities have the potential to result in behavioral harassment of marine mammals in the vicinity of the survey area. The notice of proposed IHA (86 FR 56902; October 13, 2021) included a discussion of the effects of anthropogenic noise on marine mammals and the potential effects of underwater noise from CTJV's construction on marine mammals and their habitat. That information and analysis is incorporated by reference into this final IHA determination and is not repeated here; please refer to the notice of proposed IHA (86 FR 56902; October 13, 2021).

Estimated Take

This section provides an estimate of the number of incidental takes authorized through this IHA, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact determination.

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 would primarily be by Level B harassment, as use of the acoustic sources (*i.e.,* vibratory or impact pile driving and down-the-hole (DTH)) have the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some potential for auditory injury (Level A harassment) to result for pinnipeds and harbor porpoise because predicted auditory injury zones are larger. The mitigation and monitoring measures are expected to minimize the severity of the taking to the extent practicable.

As described previously, no mortality is anticipated or authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (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) and the

number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Due to the lack of marine mammal density data available for this location, NMFS relied on local occurrence data and group size to estimate take for some species. Below, we describe the factors considered here in more detail and present the take estimate.

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 for Non-Explosive Sources

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 (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB re 1 microPascal (μPa) (root mean square (rms)) for continuous (*e.g.,* vibratory pile-driving) and above 160 dB re 1 μPa (rms) for non-explosive impulsive (*e.g.,* impact pile driving) or intermittent (*e.g.,* scientific sonar) sources.

CTJV's proposed activity includes the use of continuous (vibratory hammer and DTH) and impulsive (impact pile-driving) sources, and therefore the 120 and 160 dB re 1 μPa (rms) thresholds are applicable. However, CTJV recorded ambient sounds at the project site for over two weeks in 2019 (*https://media.fisheries.noaa.gov/dam-migration/ctjvthimbleshoals_final_ssv_report_opr1_3-23.pdf*) and established that median ambient sounds levels were 122.78 dB. We have therefore agreed to use this value as the threshold for the continuous sources.

Level A Harassment for Non-Explosive Sources

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). CTJV's activity includes the use of impulsive (impact pile-driving and DTH) and non-impulsive (vibratory hammer and DTH) sources.

These thresholds are provided in Table 2. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2018 Technical Guidance, which may be accessed at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 2—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	*Cell 2:* $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	*Cell 4:* $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	*Cell 6:* $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	*Cell 8:* $L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	*Cell 10:* $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic 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 should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μPa, and cumulative sound exposure level (L_E) has a reference value of 1μPa^{2}s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript "flat" is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. 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 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 acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds, which include source levels and transmission loss coefficient.

The sound field in the project area is the existing background noise plus additional construction noise from the proposed project. Marine mammals are expected to be affected via sound generated by the primary components of the project (*i.e.,* impact and vibratory pile driving, and DTH).

In order to calculate distances to the Level A harassment and Level B harassment sound thresholds for the methods and piles being used in this project, NMFS used acoustic monitoring data from other locations to develop source levels for the various pile types, sizes and methods (Table 3). Based on monitoring the sound source levels for some piles with versus without a bubble curtain in prior years of this project it was determined that the bubble curtain system used for this project provided a 6 db reduction in near field sound levels (*https://media.fisheries.noaa.gov/dam-migration/ctjvthimbleshoals_final_ssv_report_opr1_3-23.pdf*) and we have agreed to apply this reduction in source levels for this proposed work.

TABLE 3—PROJECT SOUND SOURCE LEVELS

Method	Estimated noise levels (dB)	Source
DTH—impulsive	164 SELss	Reyff & Heyvaert (2019)
DTH—non-impulsive	166 dB RMS	Denes *et al.* (2016)
Impact	204 Pk, 177 SEL *	Caltrans (2015) Table I.2.1
Vibratory	174 Pk, 164 RMS *	Caltrans (2015) Table I.2.2

Note: SEL = single strike sound exposure level; RMS = root mean square.
* Source levels reduced by 6 dB to account for use of bubble curtain.

Level B Harassment Zones

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; for practical spreading equals 15
R1 = the distance of the modeled SPL from the driven pile, and
R2 = the distance from the driven pile of the initial measurement

The recommended TL coefficient for most nearshore environments is the practical spreading value of 15. This value results in an expected propagation environment that would lie between spherical and cylindrical spreading loss conditions, which is the most appropriate assumption for CTJV's proposed activity in the absence of specific modelling.

CTJV determined underwater noise would fall below the behavioral effects threshold of 160 dB RMS for impact driving at 136 m and the 122.78 dB rms threshold for vibratory driving at 5,598 m (Table 4). Distances to the 122.78 threshold for the various combinations of simultaneous DTH, vibratory pile driving, and/or impact pile driving range from 7,609 to 14,061 m (Table 4). It should be noted that based on the bathymetry and geography of the project area, sound will not reach the full distance of the harassment isopleths in all directions (see Application Appendix A).

Level A Harassment Zones

When the NMFS Technical Guidance (2016) was published, in recognition of the fact that ensonified area/volume could be more technically challenging to predict because of the duration component in the new thresholds, we developed a User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to help predict takes. We note that because of some of the assumptions included in the methods used for these tools, we anticipate that isopleths produced are typically going to be overestimates of some degree, which may result in some degree of overestimate of take by Level A harassment. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 3D modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools, and will qualitatively address the output where appropriate. For stationary sources such as pile driving or removal and DTH using any of the methods discussed above, NMFS User Spreadsheet predicts the closest distance at which, if a marine mammal remained at that distance the whole duration of the activity, it would not incur PTS. We used the User Spreadsheet to determine the Level A harassment isopleths. Inputs used in the User Spreadsheet or models are 12 minutes per pile for vibratory hammer, 1000 strikes per pile for impact hammer, and 36,000 strikes per pile for DTH. All scenarios use a Transmission Loss Coefficient of 15. Resulting isopleths are reported in Table 4 for each of the construction methods and scenarios.

TABLE 4—LEVEL A AND LEVEL B ISOPLETHS (METERS) FOR EACH METHOD

Method and piles per day	Low-frequency cetaceans	Mid-frequency cetaceans	High-frequency cetaceans	Phocids	Otariids	Level B
DTH (3 per day)	1,226	44	1,460	656	48	7,609
DTH (6 per day)	1,946	70	2,318	1,042	76	12,060
Impact (4 per day)	1,002	36	1,194	537	39	136
Impact (6 per day)	1,313	47	1,564	703	52	136
Vibratory	9	1	14	6	1	5,598
Impact + DTH	Use zones for each source alone					7,609
DTH + Vibratory	Use DTH zones					10,344
Impact + Vibratory	Use Impact zones					5,598
Impact + DTH + DTH	Use zones for each source alone					12,060
DTH + DTH+ Vibratory	Use DTH zones					14,061
DTH + Vibratory + Impact	Use DTH zones					10,344
Impact + Impact + DTH	Use zones for each source alone					7,609

Because CTJV will use multiple simultaneous methods we need to account for the effect of this on sound levels. When two non-impulsive continuous noise sources, such as vibratory hammers or DTH, have overlapping sound fields, there is potential for higher sound levels than for non-overlapping sources. In these cases, the sources may be considered additive and combined using the rules in Table 5. For addition of two simultaneous non-impulsive continuous sources, the difference between the two sound source levels (SSLs) is calculated,

and if that difference is between 0 and 1 dB, 3 dB are added to the higher SSL; if difference is between 2 or 3 dB, 2 dB are added to the highest SSL; if the difference is between 4 to 9 dB, 1 dB is added to the highest SSL; and with differences of 10 or more dB, there is no addition.

For simultaneous usage of three or more continuous sound sources, the three overlapping sources with the highest SSLs are identified. Of the three highest SSLs, the lower two are combined using the above rules, then the combination of the lower two is combined with the highest of the three. For example, with overlapping isopleths from 24-, 36-, and 42-inch diameter steel pipe piles with SSLs of 161, 167, and 168 dB rms respectively, the 24- and 36-inch would be added together; given that 167 − 161 = 6 dB, then 1 dB is added to the highest of the two SSLs (167 dB), for a combined noise level of 168 dB. Next, the newly calculated 168 dB is added to the 42-inch steel pile with SSL of 168 dB. Since 168 − 168 = 0 dB, 3 dB is added to the highest value, or 171 dB in total for the combination of 24-, 36-, and 42-inch steel pipe piles (NMFS 2018b; WSDOT 2018).

Simultaneous use of two or more impact hammers or DTH does not require this sort of source level additions on its own. For impact hammering or DTH, it is unlikely that the two (or more) hammers would strike at the same exact instant, and therefore, the sound source levels will not be adjusted regardless of the distance between the hammers.

TABLE 5—RULES FOR COMBINING SOUND LEVELS GENERATED DURING PILE INSTALLATION

Hammer types	Difference in SSL	Level A zones	Level B zones
Non-impulsive, Impulsive.	Any	Use impulsive zones	Use largest zone.
Impulsive, Impulsive.	Any	Use zones for each pile size and number of strikes.	Use zone for each pile size.
Non-impulsive, Non-impulsive.	0 or 1 dB	Add 3 dB to the higher source level	Add 3 dB to the higher source level.
	2 or 3 dB	Add 2 dB to the higher source level	Add 2 dB to the higher source level.
	4 to 9 dB	Add 1 dB to the higher source level	Add 1 dB to the higher source level.
	10 dB or more	Add 0 dB to the higher source level	Add 0 dB to the higher source level.

Marine Mammal Occurrence and Take Calculation and Estimation

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations. Here we describe how the information provided above is brought together to produce a quantitative take estimate. A summary of proposed take is in Table 6.

Humpback Whale

Density data for this species in the project vicinity do not exist. Populations in the mid-Atlantic have been estimated for humpback whales off the coast of New Jersey with a density of 0.000130/km^2 (Whitt *et al.,* 2015). In the Project area, a similar density may be expected. Aschettino *et al.* (2018) observed and tracked 12 individual humpback whales west of the CBBT. Based on these data, and the known movement of humpback whales from November through April at the mouth of the Chesapeake Bay, and as used in the prior IHAs, CTJV is requesting and we are proposing take of a single humpback group every two months for the duration of in-water pile driving activities. There are 12 months of in-water construction anticipated during the proposed IHA. Using an average group size of two animals, pile driving activities over a 12-month period would result in 12 takes of humpback whale by Level B harassment.

No takes by Level A harassment are expected or authorized because we expect CTJV will effectively shutdown for low-frequency whales including humpbacks at the full extent of the Level A harassment zones.

Bottlenose Dolphin

In the previous IHA for this project we used seasonal density values documented by Engelhaupt *et al.* (2016). The Level B harassment area for each pile and driving type was multiplied by the appropriate seasonal density and the anticipated number of days of a specific activity per month number to derive a total number of takes for each construction project component. We use the same approach here. The number of calculated takes for the project is 86,656 (Table 7). There is insufficient information on relative abundance to apportion the takes precisely to the three stocks present in the area. We use the same approach used in the prior IHAs as well as in the nearby Hampton Roads Bridge and Tunnel project (86 FR 17458; April 2, 2021). Given that most of the Northern North Caroline Estuarine Stock (NNCES) stock are found in the Pamlico Sound estuarine system, NMFS will assume that no more than 250 of the authorized takes will be from this stock. Since members of the northern migratory coastal and southern migratory coastal stocks are thought to occur in or near the Bay in greater numbers, we will conservatively assume that no more than half of the remaining animals will accrue to either of these stocks. Additionally, a subset of these takes would likely be comprised of Chesapeake Bay resident dolphins, although the size of that population is unknown.

No takes by Level A harassment are authorized because we expect CTJV will effectively shutdown for bottlenose dolphins at the full extent of the Level A harassment zones.

Harbor Porpoise

Density data for this species in the project vicinity do not exist. Given that harbor porpoises are uncommon in the project area, this exposure analysis (as we did for the prior IHAs) assumes that there is a porpoise sighting once during every two months of operations which would equate to six sightings during the year. Assuming an average group size of two (Hansen *et al.,* 2018; Elliser *et al.,* 2018) results in a total of 12 estimated takes of porpoises over a year.

Harbor porpoises are members of the high-frequency hearing group which have Level A harassment isopleths as large as 2,318 m during DTH installation of 6 piles per day. In the previous IHA the shutdown zone was set at 100 m since harbor porpoises are cryptic, were thought to be somewhat common in the project area and are known to approach the shoreline. There was concern there would be excessive shutdowns that would extend the project and days of exposure of marine mammals to sound if the zones were larger. However, monitoring data to date suggests we can increase the shutdown zone to 200 m and still avoid an impracticable number

of shutdowns. Therefore, we are implementing a 200 m shutdown zone as a mitigation measure. Given the relatively large Level A harassment zones during impact driving and DTH, NMFS assumed in the previous IHAs that 40 percent of estimated porpoise takes would be by Level A harassment. The monitoring data on harbor porpoise take to date do not contradict this expectation. We therefore continue to assume this percentage, resulting in five takes of porpoises by Level A harassment and seven takes by Level B harassment.

Harbor Seal

With new data on harbor seals since the initial IHAs, we are altering our estimation method for this species. The new method also aligns with what we have used in other recent nearby projects. The number of harbor seals expected to be present in the PTST project area was estimated using survey data for in-water and hauled out seals collected by the U.S. Navy at the portal islands from November 2014 through 2019 (Rees *et al.,* 2016; Jones *et al.,* 2020). The survey showed a daily average seal count of 13.6. We rounded this up to 14 seals per day We multiplied that number by 95 in-water work days on Portal Island 1 and 111 work days on Portal Island 2 (the number of days of in-water activities when the seals are present, December to May) to estimate 2,884 takes of harbor seals.

The largest Level A harassment isopleth for phocid species is 1,042 meters (m), which would occur during DTH of 6 large holes per day. In the previous IHA the shutdown zone was set at 15 m since seals are common in the project area and are known to approach the shoreline. There was concern there would be excessive shutdowns that would extend the project and days of exposure of marine mammals to sound if the zones were larger. However, monitoring data to date suggests we can increase the shutdown zone to 150 m and still avoid an impracticable number of shutdowns. Therefore, we are implementing a shutdown zone of 150 m for harbor seals. As discussed above for harbor porpoises we assume that 40 percent of the exposed seals will occur within the Level A harassment zone and the remaining affected seals would result in Level B harassment takes. Therefore, NMFS is authorizing 1,154 takes by Level A harassment and 1,730 takes by Level B harassment.

Gray Seal

The number of gray seals expected to be present at the PTST project area was estimated using survey data collected by the U.S. Navy at the portal islands from 2014 through 2018 (Rees *et al.,* 2016; Jones *et al.,* 2018). One seal was observed in February of 2015 and one seal was recorded in February of 2016, while no seals were observed at any other time. So the February rate of seal per day was estimated at 1.6. We rounded this to 2 animals per day and multiplied by the number of expected work days in February (20) to arrive at an estimate of 40 takes of gray seals per year.

The largest Level A harassment isopleth for phocid species is 1,042 m, which would occur during DTH of 6 large holes per day. In the previous IHA the shutdown zone was set at 15 m since seals are common in the project area and are known to approach the shoreline. There was concern there would be excessive shutdowns that would extend the project and days of exposure of marine mammals to sound if the zones were larger. However, monitoring data to date suggests we can increase the shutdown zone to 150 m and still avoid an impracticable number of shutdowns. Therefore, we are implementing a shutdown zone of 150 m for gray seals. As above we estimate 40 percent of these takes could be by Level A harassment, so we authorize 24 Level B harassment takes and 16 Level A harassment takes for gray seals.

TABLE 6—AUTHORIZED AMOUNT OF TAKING, BY LEVEL A HARASSMENT AND LEVEL B HARASSMENT, BY SPECIES AND STOCK AND PERCENT OF TAKE BY STOCK

Common name	Stock	Level A harassment	Level B harassment	Percent of stock
Humpback whale	Gulf of Maine	0	12	0.9
Harbor Porpoise	Gulf of Maine/Bay of Fundy	5	7	<0.1
Bottlenose dolphin	WNA Coastal, Northern Migratory	0	43,203	651
Bottlenose dolphin	WNA Coastal, Northern Migratory	0	43,203	651
Bottlenose dolphin	NNCES	0	250	30.4
Harbor seal	Western North Atlantic	1,154	1,730	4.7
Gray seal	Western North Atlantic	16	24	<0.1

TABLE 7—DATA TO ESTIMATE LEVEL B HARASSMENT TAKE OF BOTTLENOSE DOLPHINS

Months		Nov.	Dec.–Feb.	March–May	June–Aug.	Sept.–Oct.	Level B area (km^2)	Dolphin take
Dolphin Density/km^2	Island	3.88	0.63	1	3.55	3.88	.....	.....
Impact + DTH	1	17	40	16	4	0	136	16,507
Impact + DTH	2	0	3	7	50	38	147	46,766
DTH + Vibratory	1	2	4	1	1	0	218	3,235
DTH + Vibratory	2	0	0	1	2	2	250	3,966
Impact + Vibratory	1	2	4	1	1	0	80	1,188
Impact + Vibratory	2	0	0	1	2	2	79	1,176
DTH + DTH + Impact	1 & 2	0	4	13	1	0	323	6,161
DTH + DTH + Vibratory	1 & 2	0	1	5	0	0	402	2,264
DTH + Vibratory + Impact	1 & 2	0	2	5	1	0	255	2,181
Impact + Impact + DTH	1 & 2	0	5	13	1	0	163	3,212

Note: Take is calculated by multiplying the density for a given time by the Area of the Level B harassment zone and the number of days of work (found in the main cells of the table). See more detailed table with monthly totals in Table 16 of the application.

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, we carefully consider 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, 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.

The following mitigation measures are included in the IHA:

- Avoid direct physical interaction with marine mammals during construction activity. If a marine mammal comes within 10 m of such activity, operations must cease and vessels must reduce speed to the minimum level required to maintain steerage and safe working conditions;
- Conduct training between construction supervisors and crews and the marine mammal monitoring team and relevant CTJV staff prior to the start of all pile driving and DTH activity and when new personnel join the work, so that responsibilities, communication procedures, monitoring protocols, and operational procedures are clearly understood;
- Pile driving activity must be halted upon observation 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, entering or within the harassment zone;
- CTJV will establish and implement the shutdown zones indicated in Table 8. The purpose of a shutdown zone is generally to define an area within which shutdown of the activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). Shutdown zones typically vary based on the activity type and marine mammal hearing group;
- Employ Protected Species Observers (PSOs) and establish monitoring locations as described in the Marine Mammal Monitoring Plan and Section 5 of the 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. For all pile driving and removal at least one PSO must be used. The PSO will be stationed as close to the activity as possible;
- The placement of the PSOs during all pile driving and removal and DTH activities will ensure that the entire shutdown zone is visible during pile installation. Should environmental conditions deteriorate such that marine mammals within the entire shutdown zone will not be visible (*e.g.,* fog, heavy rain), pile driving and removal must be delayed until the PSO is confident marine mammals within the shutdown zone could be detected;
- Monitoring must take place from 30 minutes prior to initiation of pile driving activity through 30 minutes post-completion of pile driving activity. Pre-start clearance monitoring must be conducted during periods of visibility sufficient for the lead PSO to determine the shutdown zones clear of marine mammals. Pile driving may commence following 30 minutes of observation when the determination is made;
- If pile driving is delayed or halted due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily exited and been visually confirmed beyond the shutdown zone or 15 minutes have passed without re-detection of the animal;
- CTJV must use soft start techniques when impact pile driving. Soft start requires contractors to provide an initial set of three strikes at reduced energy, followed by a 30-second waiting period, then two subsequent reduced-energy strike sets. A soft start must be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer; and
- Use a bubble curtain during impact and vibratory pile driving and DTH in water depths greater than three m and ensure that it is operated as necessary to achieve optimal performance, and that no reduction in performance may be attributable to faulty deployment. At a minimum, CTJV must adhere to the following performance standards: The bubble curtain must distribute air bubbles around 100 percent of the piling circumference for the full depth of the water column. The lowest bubble ring must be in contact with the substrate for the full circumference of the ring, and the 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. Airflow to the bubblers must be balanced around the circumference of the pile. For work with interlocking pipe piles for the berm construction a special three-sided bubble curtain will be used (see Application Appendix A).

TABLE 8—SHUTDOWN ZONES (METERS) FOR EACH METHOD

Method and piles/day	Low-frequency cetaceans	Mid-frequency cetaceans	High-frequency cetaceans	Phocids
DTH (3/day)	1230	50	200	150
DTH (6/day)	1950	70	200	150
Impact (4/day)	1010	40	200	150
Impact (6/day)	1320	50	200	150

TABLE 8—SHUTDOWN ZONES (METERS) FOR EACH METHOD—Continued

Method and piles/day	Low-frequency cetaceans	Mid-frequency cetaceans	High-frequency cetaceans	Phocids
Vibratory (4/day)	20	10	20	10
Impact + DTH	Use zones for each source alone			
DTH + Vibratory	1230	50	200	150
Impact + Vibratory	1320	50	200	150
Impact + DTH + DTH	1320	50	200	150
DTH + DTH+ Vibratory	1950	70	200	1050
DTH + Vibratory + Impact	1320	50	200	710
Impact + Impact + DTH	Use zones for each source alone			

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has determined that the mitigation measures provide the means effecting the least practicable 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 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 in the proposed action area. 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 action; 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.

Visual Monitoring

Monitoring must be conducted by qualified, NMFS-approved PSOs, in accordance with the following: PSOs must be independent (*i.e.,* not construction personnel) and have no other assigned tasks during monitoring periods. 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. Other PSOs may substitute other relevant experience, education (degree in biological science or related field), or training. PSOs must be approved by NMFS prior to beginning any activity subject to this IHA.

• PSOs must record all observations of marine mammals as described in the Section 5 of the IHA and the Marine Mammal Monitoring Plan, regardless of distance from the pile being driven. PSOs shall document any behavioral reactions in concert with distance from piles being driven or removed;

PSOs must have the following additional qualifications:

• Ability to conduct field observations and collect data according to assigned protocols;

• Experience or training in the field identification of marine mammals, including the identification of behaviors;

• Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;

• Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior; and

• Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary; and

• CTJV must establish the following monitoring locations. For all pile driving and DTH activities, a minimum of one PSO must be assigned to the active pile driving or DTH location to monitor the shutdown zones and as much of the Level A and Level B harassment zones as possible. For activities in Table 4 above with Level B harassment zones larger than 6000 m, an additional PSO must be stationed at Fort Story to monitor as much of the Level B harassment zone as possible.

Reporting

A draft marine mammal monitoring report will be submitted to NMFS within 90 days after the completion of pile driving and removal activities, or 60 days prior to a requested date of issuance of any future IHAs for projects at the same location, whichever comes first. The report will include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the report must include:

• Dates and times (begin and end) of all marine mammal monitoring;

• Construction activities occurring during each daily observation period, including the number and type of piles driven or removed and by what method (*i.e.,* impact or cutting) and the total equipment duration for cutting for each pile or total number of strikes for each pile (impact driving);

• PSO locations during marine mammal monitoring;

• 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;

• Upon observation of a marine mammal, the following information: Name of PSO who sighted the animal(s) and PSO location and activity at time of sighting; Time of sighting; 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; Distance and bearing of each marine mammal observed relative to the pile being driven for each sighting (if pile driving was occurring at time of sighting); Estimated number of animals (min/max/best estimate); Estimated number of animals by cohort (adults, juveniles, neonates, group composition, etc.); Animal's closest point of approach and estimated time spent within the harassment zone; Description of any marine mammal behavioral observations (*e.g.,* observed behaviors such as feeding or traveling), including an assessment of behavioral responses thought to have resulted from the activity (*e.g.,* no response or changes in behavioral state such as ceasing feeding, changing direction, flushing, or breaching);

• Number of marine mammals detected within the harassment zones, by species; and

• Detailed information about any implementation of any mitigation triggered (*e.g.,* shutdowns and delays), a description of specific actions that ensued, and resulting changes in behavior of the animal(s), if any.

If no comments are received from NMFS within 30 days, the draft final report will constitute the final report. If comments are received, a final report addressing NMFS comments must be submitted within 30 days after receipt of comments.

Reporting Injured or Dead Marine Mammals

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, the IHA-holder must immediately cease the specified activities and report the incident to the Office of Protected Resources (OPR) (*PR.ITP.MonitoringReports@noaa.gov*), NMFS and to Greater Atlantic Regional Stranding Coordinator as soon as feasible. If the death or injury was clearly caused by the specified activity, CTJV must immediately cease the specified activities until NMFS is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the IHA. The IHA-holder must not resume their activities until notified by NMFS. The report must include the following information:

• Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);

• Species identification (if known) or description of the animal(s) involved;

• Condition of the animal(s) (including carcass condition if the animal is dead);

• Observed behaviors of the animal(s), if alive;

• If available, photographs or video footage of the animal(s); and

• 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 responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), 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's 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 environmental 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).

Pile driving and removal and DTH activities have the potential to disturb or displace marine mammals. Specifically, the project activities may result in take, in the form of Level A and Level B harassment from underwater sounds generated from pile driving and removal and DTH. Potential takes could occur if individuals are present in the ensonified zone when these activities are underway.

The takes from Level A and Level B harassment would be due to potential behavioral disturbance, TTS, and PTS. No serious injury or mortality is anticipated given the nature of the activity and measures designed to minimize the possibility of injury to marine mammals. The potential for harassment is minimized through the construction method and the implementation of the planned mitigation measures (see Mitigation section).

The Level A harassment zones identified in Table 4 are based upon an animal exposed to impact pile driving multiple piles per day. Considering the short duration to impact drive or DTH each pile and breaks between pile installations (to reset equipment and move pile into place), this means an animal would have to remain within the area estimated to be ensonified above the Level A harassment threshold for multiple hours. This is highly unlikely given marine mammal movement throughout the area. If an animal was exposed to accumulated sound energy, the resulting PTS would likely be small (*e.g.,* PTS onset) at lower frequencies where pile driving energy is concentrated, and unlikely to result in impacts to individual fitness, reproduction, or survival.

The nature of the pile driving project precludes the likelihood of serious injury or mortality. For all species and stocks, take would occur within a limited, confined area (adjacent to the CBBT) of the stock's range. Level A and Level B harassment will be reduced to the level of least practicable adverse impact through use of mitigation measures described herein. Further the

amount of take authorized is extremely small when compared to stock abundance.

Behavioral responses of marine mammals to pile driving at the project site, if any, are expected to be mild and temporary. Marine mammals within the Level B harassment zone may not show any visual cues they are disturbed by activities (as noted during modification to the Kodiak Ferry Dock) or could become alert, avoid the area, leave the area, or display other mild responses that are not observable such as changes in vocalization patterns. Given the short duration of noise-generating activities per day, any harassment would be temporary. There are no other areas or times of known biological importance for any of the affected species.

We acknowledge the existence and concern about the ongoing humpback whale UME. We have no evidence that this project is likely to result in vessel strikes (a major correlate of the UME) and marine construction projects in general involve the use of slow-moving vessels, such as tugs towing or pushing barges, or smaller work boats maneuvering in the vicinity of the construction project. These vessel types are not typically associated with vessel strikes resulting in injury or mortality. More generally, the UME does not yet provide cause for concern regarding population-level impacts for humpback whales. Despite the UME, the West Indies breeding population or DPS, remains healthy.

In addition, it is unlikely that minor noise effects in a small, localized area of habitat would have any effect on the stocks' ability to recover. In combination, we believe that these factors, as well as the available body of evidence from other similar activities, demonstrate that the potential effects of the specified activities will have only minor, short-term effects on individuals. The specified activities are not expected to impact rates of recruitment or survival and will therefore not result in population-level impacts.

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 mortality is anticipated or authorized;
- Authorized Level A harassment would be very small amounts and of low degree;
- No important habitat areas have been identified within the project area;
- For all species, Chesapeake Bay is a very small and peripheral part of their range;
- CTJV would implement mitigation measures such as bubble curtains, soft-starts, and shut downs; and
- Monitoring reports from similar work in Chesapeake Bay have documented little to no effect on individuals of the same species impacted by the specified activities.

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 proposed monitoring and mitigation measures, NMFS finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under section 101(a)(5)(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 in our determination of 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.

The amount of take NMFS proposes to authorize is below one third of the estimated stock abundance for humpback whale, harbor porpoise, gray seal, harbor seal (in fact, take of individuals is less than 10 percent of the abundance of the affected stocks, see Table 4). This is likely a conservative estimate because they assume all takes are of different individual animals which is likely not the case. Some individuals may return multiple times in a day, but PSOs would count them as separate takes if they cannot be individually identified.

There are three bottlenose dolphin stocks that could occur in the project area. Therefore, the estimated 86,656 dolphin takes by Level B harassment would likely be split among the western North Atlantic northern migratory coastal stock, western North Atlantic southern migratory coastal stock, and NNCES stock. Based on the stocks' respective occurrence in the area, NMFS estimated that there would be no more than 250 takes from the NNCES stock, representing 30.4 percent of that population, with the remaining takes split evenly between the northern and southern migratory coastal stocks. Based on consideration of various factors described below, we have determined the numbers of individuals taken would comprise less than one-third of the best available population abundance estimate of either coastal migratory stock. Detailed descriptions of the stocks' ranges have been provided in Description of Marine Mammals in the Area of Specified Activities.

Both the northern migratory coastal and southern migratory coastal stocks have expansive ranges and they are the only dolphin stocks thought to make broad-scale, seasonal migrations in coastal waters of the western North Atlantic. Given the large ranges associated with these two stocks it is unlikely that large segments of either stock would approach the project area and enter into the Chesapeake Bay. The majority of both stocks are likely to be found widely dispersed across their respective habitat ranges and unlikely to be concentrated in or near the Chesapeake Bay.

Furthermore, the Chesapeake Bay and nearby offshore waters represent the boundaries of the ranges of each of the two coastal stocks during migration. The northern migratory coastal stock is found during warm water months from coastal Virginia, including the Chesapeake Bay and Long Island, New York. The stock migrates south in late summer and fall. During cold-water months dolphins may be found in coastal waters from Cape Lookout, North Carolina, to the North Carolina/Virginia. During January–March, the southern migratory coastal stock appears to move as far south as northern Florida. From April to June, the stock moves back north to North Carolina. During the warm water months of July–August, the stock is presumed to occupy coastal waters north of Cape Lookout, North Carolina, to Assateague, Virginia, including the Chesapeake Bay. There is likely some overlap between the northern and southern migratory stocks during spring and fall migrations, but the extent of overlap is unknown.

The Bay and waters offshore of the mouth are located on the periphery of the migratory ranges of both coastal stocks (although during different seasons). Additionally, each of the migratory coastal stocks are likely to be located in the vicinity of the Bay for relatively short timeframes. Given the

limited number of animals from each migratory coastal stock likely to be found at the seasonal migratory boundaries of their respective ranges, in combination with the short time periods (~2 months) animals might remain at these boundaries, it is reasonable to assume that takes are likely to occur only within some small portion of either of the migratory coastal stocks.

Both migratory coastal stocks likely overlap with the NNCES stock at various times during their seasonal migrations. The NNCES stock is defined as animals that primarily occupy waters of the Pamlico Sound estuarine system (which also includes Core, Roanoke, and Albemarle sounds, and the Neuse River) during warm water months (July–August). Members of this stock also use coastal waters (≤1 kilometer from shore) of North Carolina from Beaufort north to Virginia Beach, Virginia, including the lower Chesapeake Bay. Comparison of dolphin photo-identification data confirmed that limited numbers of individual dolphins observed in Roanoke Sound have also been sighted in the Chesapeake Bay (Young, 2018). Like the migratory coastal dolphin stocks, the NNCES stock covers a large range. The spatial extent of most small and resident bottlenose dolphin populations is on the order of 500 km^2, while the NNCES stock occupies over 8,000 km^2 (LeBrecque *et al.,* 2015). Given this large range, it is again unlikely that a preponderance of animals from the NNCES stock would depart the North Carolina estuarine system and travel to the northern extent of the stock's range and enter into the Bay. However, recent evidence suggests that there is likely a small resident community of NNCES dolphins of indeterminate size that inhabits the Chesapeake Bay year-round (Eric Patterson, Personal Communication).

Many of the dolphin observations in the Bay are likely repeated sightings of the same individuals. The Potomac-Chesapeake Dolphin Project has observed over 1,200 unique animals since observations began in 2015. Re-sightings of the same individual can be highly variable. Some dolphins are observed once per year, while others are highly regular with greater than 10 sightings per year (Mann, Personal Communication). Similarly, using available photo-identification data, Engelhaupt *et al.* (2016) determined that specific individuals were often observed in close proximity to their original sighting locations and were observed multiple times in the same season or same year. Ninety-one percent of re-sighted individuals (100 of 110) in the study area were recorded less than 30 km from the initial sighting location. Multiple sightings of the same individual would considerably reduce the number of individual animals that are taken by harassment. Furthermore, the existence of a resident dolphin population in the Bay would increase the percentage of dolphin takes that are actually re-sightings of the same individuals.

Monitoring reports and data from prior years of the project work have recorded less than 10 level B takes of bottlenose dolphins in over 100 days of monitored pile driving.

In summary and as described above, the following factors primarily support our determination regarding the incidental take of small numbers of a species or stock:

- The take of marine mammal stocks authorized for take comprises less than 10 percent of any stock abundance (with the exception of bottlenose dolphin stocks);
- Potential bottlenose dolphin takes in the project area are likely to be allocated among three distinct stocks;
- Bottlenose dolphin stocks in the project area have extensive ranges and it would be unlikely to find a high percentage of any one stock concentrated in a relatively small area such as the project area or the Bay;
- The Bay represents the migratory boundary for each of the specified dolphin stocks and it would be unlikely to find a high percentage of any stock concentrated at such boundaries;
- Monitoring from prior years found less than 10 level B takes of bottlenose dolphin in over 100 days of monitored pile driving; and
- Many of the takes would be repeats of the same animal and it is likely that a number of individual animals could be taken 10 or more times.

Based on the analysis contained herein of the proposed activity (including the proposed 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 would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

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 NOAA Administrative Order 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 the issuance of the IHA qualifies to be categorically excluded from further NEPA review.

Endangered Species Act

Section 7(a)(2) of the 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 IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

No incidental take of ESA-listed species is proposed for authorization or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Authorization

NMFS has issued an IHA to the CTJV for the potential harassment of small numbers of five marine mammal species incidental to conduct the PTST Project in Virginia Beach, Virginia for one year from the date of issuance, provided the previously mentioned mitigation, monitoring, and reporting requirements are followed.

Dated: November 18, 2021.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2021–25627 Filed 11–23–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

[RTID 0648–XB398]

Review and Comment of National Oceanic and Atmospheric Administration Tribal Consultation Policy and Procedures

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for information.

SUMMARY: On January 26, 2021, the White House issued a Presidential Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships that reaffirmed Executive Order 13175 on Consultation and Coordination with Indian Tribal Governments (2000) and the associated Presidential Memorandum on Tribal Consultation released in November 2009. In response, NOAA is requesting review of its policy and procedures to implement these directives. NOAA is seeking comment from federally recognized Indian Tribes and other interested parties on its policies and guidance documents for government-to-government consultation with federally recognized Indian Tribes.

DATES: Federally recognized Indian Tribes and interested persons are invited to submit comments by January 24, 2022.

ADDRESSES: Responses should be submitted via email to *heather.sagar@noaa.gov.* Include ''NOAA Tribal Consultation Policy'' in the subject line of the message.

Instructions: Response to this request for information (RFI) is voluntary. Email attachments will be accepted in plain text, Microsoft Word, or Adobe PDF formats only. Each individual or institution is requested to submit only one response. NOAA may post responses to this RFI, without change, on a Federal website. It is, therefore, requested that no business proprietary information, copyrighted information, or personally identifiable information be submitted in response to this RFI. Please note that the U.S. Government will not pay for response preparation, or for the use of any information contained in the response.

FOR FURTHER INFORMATION CONTACT: Heather Sagar, *heather.sagar@noaa.gov,* (301) 427–8019.

SUPPLEMENTARY INFORMATION: On January 26, 2021, the White House issued a Presidential Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships. The Memorandum requires the Secretary of Commerce to submit to the Director of the Office of Management and Budget (OMB), a detailed plan of actions the agency will take to implement the policies and directives of Executive Order (E.O.) 13175 (2000) and the Presidential Memorandum on Tribal Consultation issued in November 2009. This request for information will inform NOAA's contributions to the Department of Commerce (DOC) plan.

NOAA's mission is to understand and predict changes in climate, weather, oceans, and coasts, to share that knowledge and information with others, and to conserve and manage coastal and marine ecosystems and resources. NOAA has established policies and guidance to provide for meaningful and timely input from federally recognized Indian Tribes into NOAA's decision-making process on policy matters that have tribal implications. In addition, NOAA offers its employees training and other guidance to support a consistent, effective, and proactive approach to conducting government-to-government consultations with federally recognized Indian Tribes under E.O. 13175, the DOC Department Administrative Order 218–8 *Consultation and Coordination with Indian Tribal Governments (2014),* and the DOC Tribal Consultation and Coordination Policy (78 FR 33331; June 4, 2013).

While much of NOAA's existing policy and guidance has been developed in consultation with federally recognized Indian Tribes, NOAA recognizes that these documents could benefit from a review and update. As part of its effort to implement the January 26, 2021 Presidential Memorandum, NOAA is requesting comments from Tribal Nations, Tribal officials, members of the public, and other interested parties to help identify appropriate updates or revisions to the following existing NOAA policies and guidance documents, which facilitate NOAA's implementation of E.O. 13175: (1) Tribal Consultation Handbook titled *NOAA Procedures for Government-to-Government Consultation With Federally Recognized Indian Tribes and Alaska Native Corporations (2013)*; (2) NOAA Administrative Order 218–8 titled *Policy on Government-to-Government Consultation with Federally Recognized Indian Tribes and Alaska Native Corporations (Reaffirmed in 2018)*; and (3) a traditional ecological knowledge (TEK) guidance currently titled *NOAA Fisheries and National Ocean Service Guidance and Best Practices for Engaging and Incorporating Traditional Ecological Knowledge in Decision-Making (2019).* NOAA proposes revisions to its Tribal Consultation Handbook to reflect lessons learned and improved practices to better facilitate meaningful and effective tribal consultations. NOAA also proposes minor revisions to Administrative Order 218–8 to reflect necessary updates since its issuance in 2014. We are also seeking comments on the existing TEK Guidance, which has not been previously made available for public comment. Though the TEK Guidance is only currently implemented by NOAA Fisheries and the National Ocean Service, NOAA is now extending the applicability of the TEK Guidance to all NOAA Offices. NOAA is interested in whether updates or revisions are appropriate for this TEK Guidance, including terminology. Updates or revisions to NOAA's Tribal Consultation Handbook, Administrative Order, and TEK Guidance will be informed by the input we receive from federally recognized Indian Tribes, the public, and other interested parties.

In addition, NOAA plans to hold two consultation webinars with federally recognized Indian Tribes on these policies and guidance documents on January 10 and January 11, 2022.

All three documents and additional information about the webinars can be found at this NOAA website: *https://www.noaa.gov/legislative-and-intergovernmental-affairs/noaa-tribal-resources-updates.*

Dated: November 17, 2021.

Richard W. Spinrad,

Under Secretary of Commerce for Oceans and Atmosphere and NOAA Administrator.

[FR Doc. 2021–25629 Filed 11–23–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB610]

Marine Mammals; File No. 25885

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Peter Thielen, D. Eng., Johns Hopkins University, Applied Physics Laboratory, 11100 Johns Hopkins Rd., Laurel, MD 20723 has applied in due form for a permit to import, export, and receive marine mammal parts for scientific research.

DATES: Written, telefaxed, or email comments must be received on or before December 27, 2021.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the ''Features'' box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 25885 from the list of available applications. These documents are also available upon written request via email to *NMFS.Pr1Comments@noaa.gov.*

Written comments on this application should be submitted via email to *NMFS.Pr1Comments@noaa.gov.* Please include File No. 25885 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request via email to *NMFS.Pr1Comments@noaa.gov.* The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Shasta McClenahan, Ph.D. or Jennifer Skidmore, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The applicant proposes to import, export, and receive marine mammal parts for scientific research to develop advanced genomic characterization capability for detection of marine mammal species using environmental DNA. Unlimited parts or cell lines from up to 224 individual cetaceans and 106 individual pinnipeds, excluding walrus, may be obtained in year one, and parts or cell lines from up to 40 individual cetaceans and pinnipeds, excluding walrus, may be obtained annually in years two through five of the project. The requested duration of the permit is five years.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: November 19, 2021.

Amy Sloan,

Acting Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2021–25718 Filed 11–23–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2021–SCC–0139]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Eligibility of Students at Institutions of Higher Education for Funds Under the CARES Act

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension without change of a currently approved collection.

DATES: Interested persons are invited to submit comments on or before December 27, 2021.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this information collection request by selecting ''Department of Education'' under ''Currently Under Review,'' then check ''Only Show ICR for Public Comment'' checkbox. Comments may also be sent to *ICDocketmgr@ed.gov.*

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Karen Epps, (202) 377–4851.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), 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. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education 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: Eligibility of Students at Institutions of Higher Education for Funds under the CARES Act.

OMB Control Number: 1840–0857.

Type of Review: Extension without change of a currently approved collection.

Respondents/Affected Public: State, Local, and Tribal Governments; Private Sector; Individual or Households.

Total Estimated Number of Annual Responses: 16,016,491.

Total Estimated Number of Annual Burden Hours: 1,306,588.

Abstract: The U.S. Department of Education is requesting clearance of this extension information collection request to allow for outreach to institutions of higher education to meet the requirements of the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Public Law 116–136 (March 27, 2020). This will help to ensure that the distribution of the CARES Act funds is managed by institutions in accordance with the clarification discussed in the Final Rule. This information collection was previously approved as an emergency by the Office of Management and Budget (OMB) on May 11, 2021; this extension to the collection has no change to the current form.

Dated: November 18, 2021.

Kate 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. 2021–25607 Filed 11–23–21; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2021–SCC–0095]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Trends in International Mathematics and Science Study (TIMSS 2023) Field Test Data Collection and Main Study Sampling, Recruitment, and Data Collection

AGENCY: Institute of Education Sciences (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of a currently approved collection.

DATES: Interested persons are invited to submit comments on or before December 27, 2021.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this information collection request by selecting ''Department of Education'' under ''Currently Under Review,'' then check ''Only Show ICR for Public Comment'' checkbox. Comments may also be sent to *ICDocketmgr@ed.gov.*

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Carrie Clarady, (202) 245–6347.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), 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. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education 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: Trends in International Mathematics and Science Study (TIMSS 2023) Field Test Data Collection and Main Study Sampling, Recruitment, and Data Collection.

OMB Control Number: 1850–0695.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: Individual or Households.

Total Estimated Number of Annual Responses: 50,996.

Total Estimated Number of Annual Burden Hours: 20,336.

Abstract: The Trends in International Mathematics and Science Study (TIMSS), conducted by the National Center for Education Statistics (NCES), within the U.S. Department of Education (ED), is an international assessment of fourth and eighth grade students' achievement in mathematics and science. Since its inception in 1995, TIMSS has continued to assess students every 4 years (1995, 1999, 2003, 2007, 2011, 2015, and 2019), with the next TIMSS assessment, TIMSS 2023, being the eighth iteration of the study. In TIMSS 2023, approximately 65 countries or education systems will participate. The United States will participate in TIMSS 2023 to continue to monitor the progress of its students compared to that of other nations and to provide data on factors that may influence student achievement.

TIMSS is led by the International Association for the Evaluation of Educational Achievement (IEA), an international collective of research organizations and government agencies that create the frameworks used to develop the assessment, the survey instruments, and the study timeline. IEA decides and agrees upon a common set of standards, procedures, and timelines for collecting and reporting data, all of which must be followed by all participating countries. As a result, TIMSS is able to provide a reliable and comparable measure of student skills in participating countries. In the U.S., NCES conducts this study in collaboration with the IEA and a number of contractors to ensure proper implementation of the study and adoption of practices in adherence to the IEA's standards. Participation in TIMSS is consistent with NCES's mandate of acquiring and disseminating data on educational activities and student achievement in the United States compared with foreign nations [The Educational Sciences Reform Act of 2002 (ESRA 2002, 20 U.S.C. §9543)].

A previous request to conduct sampling and recruitment activities associated with the TIMSS 2023 field test, which will be conducted in March and April 2022, was approved by OMB in May 2021 (OMB# 1850–0695 v.16). Because TIMSS is a collaborative effort among many parties, the United States must adhere to the international schedule set forth by the IEA, including the availability of final field test and main study plans as well as draft and final questionnaires. In order to meet the international data collection schedule, to align with recruitment for other NCES studies (*e.g.,* the National Assessment of Education Progress, NAEP), and for schools to put the TIMSS 2023 field test assessment on their Spring 2022 calendars, recruitment activities for the field test will begin in June of 2021. This package requests approval for the field test data collection materials and the main study sampling, recruiting, and data collection plans. Recruitment activities for the main study will begin in January 2022, with the data collection activities currently scheduled to begin in March 2023.

Dated: November 19, 2021.

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. 2021–25645 Filed 11–23–21; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Request for Information on DOE's Cybersecurity Capability Maturity Model (C2M2) Version 2.0 (July 2021)

AGENCY: Office of Cybersecurity, Energy Security, and Emergency Response; Department of Energy.

ACTION: Request for information.

SUMMARY: In July 2021, the Department of Energy (DOE) released Version 2.0 of the Cybersecurity Capability Maturity Model (C2M2), a tool that helps organizations evaluate and improve their cybersecurity capabilities, considering their specific risk environment. The update was guided by input from the Energy Sector C2M2 Working Group, which comprises 145 energy sector cybersecurity practitioners representing 77 energy sector and cybersecurity organizations. Version 2.0 updates the model from Version 1.1,

released in 2014, and includes a variety of updates to the model domains and practices to better address emerging technologies and the evolving cyber threat landscape. Since the release in July, DOE has piloted the updated model with energy companies and utilities. To obtain the broadest possible input, DOE seeks public comment on the C2M2 to inform the C2M2 Working Group as it develops future model updates.

DATES: Comments and information must be received on or before December 27, 2021.

ADDRESSES: To access and review the Cybersecurity Capability Maturity Model (C2M2), visit *www.energy.gov/c2m2.*

Comments should be submitted by email to *C2M2@hq.doe.gov* using the Comment Submission Form available here: *https://energy.gov/sites/default/files/2021-11/Comment%20Submission%20Form%20-%20Cybersecurity%20Capability%20Maturity%20Model%20%28C2M2%29.docx.* Use the email subject line: ''C2M2 Public Comment from [name/organization].''

Although DOE has routinely accepted public comment submissions through a variety of mechanisms, including postal mail and hand delivery/courier, the Department has found it necessary to make temporary modifications to the comment submission process in light of the ongoing coronavirus 2019 (''COVID–19'') pandemic. DOE is currently suspending receipt of public comments via postal mail and hand delivery/courier. If a commenter finds that this change poses an undue hardship, please contact CESER staff at (202) 586–3057 to discuss the need for alternative arrangements. Once the COVID–19 pandemic health emergency is resolved, DOE anticipates resuming all of its regular options for public comment submission, including postal mail and hand delivery/courier.

FOR FURTHER INFORMATION CONTACT: Mr. Fowad Muneer, Acting Deputy Assistant Secretary for the Cybersecurity for Energy Delivery Systems Division, U.S. Department of Energy, Office of Cybersecurity, Energy Security, and Emergency Response. Tel.: (202) 586–5961. Email: *fowad.muneer@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: The C2M2 helps organizations evaluate and improve their cybersecurity capabilities, considering their specific risk environment. The model is a voluntary tool, tailored specifically for the energy industry, that enables companies to set targets, evaluate and benchmark their cybersecurity capabilities, and use the results to prioritize actions and investments. It is scalable for a company of any size, and is designed to evaluate practice in both the information technology (IT) and operational technology (OT) environments.

DOE originally developed the C2M2 with input from energy industry partners in 2012, and released an updated Version 1.1 in 2014, with separate versions targeted for the electricity and oil and natural gas subsectors. Version 2.0, released July 2021, is designed for use across the energy sector, and can be used by other critical infrastructure sectors as well.

The Version 2.0 update was guided by input from the Energy Sector C2M2 Working Group, which DOE formed with the Electricity and Oil & National Gas Subsector Coordinating Councils. The update better addresses new technologies like cloud, mobile, and artificial intelligence, and evolving threats such as ransomware and supply chain risks.

While the structure of the model remains the same, this update resulted in some key changes:

- Revisions to two-thirds of model practices—including substantive changes and clarifications—along with additions, deletions, and combining of practices
- Addition of a Cybersecurity Architecture domain focused on planning, designing, and managing the cybersecurity control environment
- Significant updates to the Risk Management domain to incorporate leading risk management practices and enhance coordination between cyber and enterprise risk management
- Refresh of the Dependencies domain, now called the Third-Party Risk Management domain, to ensure the model effectively addresses third-party IT and OT cybersecurity risks, like sensitive data in the cloud and vendors with privileged access, as well as build supply chain security into organizational culture
- Integration of Information Sharing domain activities into the Threat and Vulnerability Management and Situational Awareness domains
- Addition of help text for each practice to improve clarity and consistency in how practices are applied

DOE requests public comment on the C2M2 to inform the C2M2 Working Group as it develops future model updates. Specifically, DOE seeks input on the following items:

- The usefulness of C2M2 practices in evaluating and improving cybersecurity program capabilities
- The applicability of practice language to the IT and OT environments in use by energy sector organizations
- The readability of and ability to understand practice language
- The completeness of cybersecurity domains, objectives, and practices included within the C2M2
- The effectiveness of guidance documentation (*e.g.,* model introduction sections, domain introductions, and appendices) in conveying model concepts, architecture, and how to use the model
- Any other potential improvements to the C2M2 documentation or practices contained therein

For more information on the C2M2, or to review the model document, visit *www.energy.gov/c2m2.*

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

Signing Authority

This document of the Department of Energy was signed on November 18, 2021, by Fowad Muneer, Acting Deputy Assistant Secretary for the Cybersecurity for Energy Delivery Systems Division, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on November 19, 2021.

Treena V. Garrett,

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

[FR Doc. 2021–25669 Filed 11–23–21; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM21–17–000]

Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection; Notice Inviting Post-Technical Conference Comments

On November 15, 2021, the Federal Energy Regulatory Commission (Commission) staff convened a technical conference to discuss potential reforms related to regional transmission planning processes.

All interested persons are invited to file post-technical conference comments to address the issues raised during that event on or before November 30, 2021. Commenters are encouraged to include such comments with any reply comments that they are filing to the Advance Notice of Proposed Rulemaking (ANOPR) in this docket. To the extent that commenters combine their technical conference and reply comments into one filing, commenters should clearly identify which comments are being raised in response to the technical conference.

Comments may be filed electronically via the internet.[1] Instructions are available on the Commission's website *http://www.ferc.gov/docs-filing/efiling.asp*. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, submissions sent via the U.S. Postal Service must be addressed to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street NE, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Federal Energy Regulatory Commission, Office of the Secretary, 12225 Wilkins Avenue, Rockville, Maryland 20852.

For more information about this Notice, please contact:

David Tobenkin (Technical Information), Office of Energy Policy and Innovation, (202) 502–6445, *David.Tobenkin@ferc.gov*

Lina Naik (Legal Information), Office of the General Counsel, (202) 502–8882, *Lina.Naik@ferc.gov*

Sarah McKinley (Logistical Information), Office of External Affairs, (202) 502–8004, *Sarah.Mckinley@ferc.gov.*

Dated: November 17, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–25619 Filed 11–23–21; 8:45 am]

BILLING CODE 6717–01–P

[1] *See* 18 CFR 385.2001(a)(1)(iii) (2020).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 15230–000, 15231–000]

Pike Island Hydropower Corporation, Pike Island Hydropower Project, LLC; Notice of Competing Preliminary Permit Applications Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On August 2, 2021, Pike Island Hydropower Corporation filed a preliminary permit application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of a hydropower project at the U.S. Army Corps of Engineers' (Corps) Pike Island Lock and Dam, located on the Ohio River near the City of Wheeling, West Virginia. On August 13, 2021, Pike Island Hydropower Project, LLC filed a preliminary permit application to study the feasibility of a hydropower project, at same site and location, on the same river, near Wheeling, West Virginia. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

Pike Island Hydropower Corporation's Pike Island Locks and Dam Hydroelectric Project (Project No. 15230–000) would consist of: (1) 160-foot-wide by 100 to 200-foot-long intake section containing trashracks; (2) a new 160-foot-wide by 160-foot-long concrete powerhouse containing two, three, or four identical Kaplan pit turbine-generators with a combined net power capacity of 20 megawatts (MW); (3) a new 160-foot-wide, 300-foot-long tailrace channel downstream of the powerhouse. The height of the proposed powerhouse and intake structure would be 658 feet above mean sea level (msl); (4) a new 200-foot-wide by 200-foot-long substation; (5) a new 1.4-mile-long, 69 kilovolt (kV), three phase overhead transmission line connecting the project substation with an existing substation in Tiltonsville, OH; and (6) appurtenant facilities. The estimated average annual energy production is 151 Gigawatt-hours (''GWh'').

Applicant Contact: Mr. Joel Herm, Pike Island Hydropower Corporation, P.O. Box 224, Rhinebeck, NY 12572–0224; Telephone: 917–244–3607.

Pike Island Hydropower Project, LLC's proposed Pike Island Hydroelectric Project (Project No. 15231–000) would consist of: (1) 225-foot-wide by 50-foot-long intake section containing trashracks, sluice gates, intake gates; (2) a new 160-foot-wide by 140-foot-long concrete powerhouse containing three new pit-type Kaplan turbines rated at 15 MW each; (3) a new 200-foot wide, 500-foot-long tailrace channel downstream of the powerhouse. The height of the proposed powerhouse and intake structure is 654 feet above msl; (4) a new 80-foot-wide by 120-foot-long, substation; (5) a new 1.288-mile-long, 138 kV, three phase overhead transmission line connecting the new project substation with an existing utility substation located in Yorkville, Ohio; and (6) appurtenant facilities. The estimated average annual energy production is 225 GWh.

Applicant Contact: Mr. Erik Steimle, Rye Development, LLC, One Beacon Street, 15th Floor, Boston, MA 02108; Telephone: (503) 998–0230.

FERC Contact: Tyrone A. Williams, *tyrone.williams@ferc.gov* or (202) 502–6331.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file the requested information using the Commission's eFiling system at *https://ferconline.ferc.gov/FERCOnline.aspx.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper request. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. New Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should

include docket number P–15320–000 or P–15321–000.

More information about the projects, including a copy of the applications, can be viewed or printed on the ''eLibrary'' link of Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–15320 or P–15321) in the docket number field to access the documents. For assistance, contact FERC Online Support.

Dated: November 17, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–25622 Filed 11–23–21; 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: EG22–25–000.
Applicants: Gruver Wind Interconnection, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Gruver Wind Interconnection, LLC.
Filed Date: 11/18/21.
Accession Number: 20211118–5064.
Comment Date: 5 p.m. ET 12/9/21.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER20–1736–003.
Applicants: Emera Maine.
Description: Compliance filing: Versant Power submits tariff filing per 35: Joint Settlement Offer Re: Maine Public Distr. Ord. 864 Compliance (ER20–1736-) to be effective 6/1/2020.
Filed Date: 11/18/21.
Accession Number: 20211118–5055.
Comment Date: 5 p.m. ET 12/9/21.

Docket Numbers: ER21–2438–002.
Applicants: Southwest Power Pool, Inc.
Description: Tariff Amendment: 3630SR1 Maverick Wind Project GIA—Deficiency Response to be effective 6/29/2021.
Filed Date: 11/18/21.
Accession Number: 20211118–5142.
Comment Date: 5 p.m. ET 12/9/21.

Docket Numbers: ER21–2916–000; ER21–2917–000.
Applicants: Milford Wind Corridor Phase II, LLC, Milford Wind Corridor Phase I, LLC.
Description: Supplement to Notice of Change in Category Seller Status for Milford Wind Corridor Phase I, LLC, et al.
Filed Date: 11/17/21.
Accession Number: 20211117–5204.
Comment Date: 5 p.m. ET 12/8/21.

Docket Numbers: ER22–423–000.
Applicants: Columbia Utilities Power Business LLC.
Description: Baseline eTariff Filing: Tariffs and Agreements to be effective 1/17/2022.
Filed Date: 11/18/21.
Accession Number: 20211118–5000.
Comment Date: 5 p.m. ET 12/9/21.

Docket Numbers: ER22–424–000.
Applicants: Assembly Solar III, LLC.
Description: Baseline eTariff Filing: Reactive Power Compensation Filing to be effective 12/31/2021.
Filed Date: 11/18/21.
Accession Number: 20211118–5033.
Comment Date: 5 p.m. ET 12/9/21.

Docket Numbers: ER22–425–000.
Applicants: Enerwise Global Technologies, LLC.
Description: Baseline eTariff Filing: Application for Market-Based Rate Authorization and Request for Exemption to be effective 11/19/2021.
Filed Date: 11/18/21.
Accession Number: 20211118–5037.
Comment Date: 5 p.m. ET 12/9/21.

Docket Numbers: ER22–427–000.
Applicants: Alabama Power Company.
Description: Tariff Amendment: AL Solar C (Cusseta Solar & Storage) LGIA Termination Filing to be effective 11/18/2021.
Filed Date: 11/18/21.
Accession Number: 20211118–5116.
Comment Date: 5 p.m. ET 12/9/21.

Docket Numbers: ER22–428–000.
Applicants: Alabama Power Company.
Description: Tariff Amendment: Hancock County Solar Project LGIA Termination Filing to be effective 11/18/2021.
Filed Date: 11/18/21.
Accession Number: 20211118–5120.
Comment Date: 5 p.m. ET 12/9/21.

Docket Numbers: ER22–429–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Revisions to OATT and OA Definitions No-load Cost and Incremental Energy Offer to be effective 1/18/2022.
Filed Date: 11/18/21.
Accession Number: 20211118–5147.
Comment Date: 5 p.m. ET 12/9/21.

Docket Numbers: ER22–430–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2021–11–18_SA 3740 Entergy Louisiana-Willis Pond GIA (J1421) to be effective 1/18/2022.
Filed Date: 11/18/21.
Accession Number: 20211118–5151.
Comment Date: 5 p.m. ET 12/9/21.

Docket Numbers: ER22–431–000.
Applicants: Pacific Gas and Electric Company.
Description: § 205(d) Rate Filing: CCSF Sunol Golf Course Project filing (SA 275) to be effective 1/18/2022.
Filed Date: 11/18/21.
Accession Number: 20211118–5161.
Comment Date: 5 p.m. ET 12/9/21.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 18, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–25681 Filed 11–23–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER22–399–000]

Meadow Lake Solar Park 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 Meadow Lake Solar Park LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888

First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is December 8, 2021.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: November 18, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–25680 Filed 11–23–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PL21–3–000]

Technical Conference on Greenhouse Gas Mitigation: Natural Gas Act Sections 3 and 7 Authorizations; Supplemental Notice of Technical Conference

As announced in the Notice of Technical Conference issued in this proceeding on September 16, 2021, the Federal Energy Regulatory Commission (Commission) will convene a Commission staff-led technical conference to discuss methods natural gas companies may use to mitigate the effects of direct and indirect greenhouse gas emissions resulting from Natural Gas Act sections 3 and 7 authorizations. The technical conference will be held on Friday, November 19, 2021, from approximately 9:00 a.m. to 3:30 p.m. Eastern time. The conference will be held virtually.

Attached to this Supplemental Notice is a revised agenda for the technical conference, which includes the final conference program and a revised list of expected speakers. The conference will be open for the public to attend virtually. Registration is not required and there is no fee for attendance. Information on this technical conference, including a link to the public webcast, is available at *www.ferc.gov/GhG-mitigation.* The conference is also posted on the Calendar of Events on the Commission's website, *www.ferc.gov.* Transcripts will be available for a fee from Ace Reporting, (202) 347–3700.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov,* call toll-free (866) 208–3372 (voice) or (202) 208–8659 (TTY), or send a fax to (202) 208–2106 with the required accommodations.

For more information about this technical conference, please contact *GHGTechConf@ferc.gov.* For information related to logistics, please contact Sarah McKinley at *sarah.mckinley@ferc.gov* or (202) 502–8368. This notice is issued and published in accordance with 18 CFR 2.1.

Dated: November 18, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–25672 Filed 11–23–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC22–3–000]

Commission Information Collection Activities (FERC Form Nos. 1, 1T, 1–F, 1–FT, 3–Q, and 3–QT); Comment Request; Extensions

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice of information collections and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995 (PRA), the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collections, FERC Form Nos. 1 and 1T (Annual Report of Major Electric Utilities, Licensees, and Others), 1–F and 1–FT (Annual Report for Nonmajor Public Utilities and Licensees), and 3–Q and 3–QT (Quarterly Financial Report of Electric Utilities, Licensees, and Natural Gas Companies).

DATES: Comments on the collections of information are due January 24, 2022.

ADDRESSES: You may submit comments (identified by Docket No. IC22–3–000 and the form) by either of the following methods:

- *Electronic Filing:* Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.
- For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery:
  - *Mail via U.S. Postal Service only, addressed to:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.
  - *Hand (including courier) delivery to:* Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov.* For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at (866) 208–3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email

at *DataClearance@FERC.gov,* and telephone at (202) 502–8663.

SUPPLEMENTARY INFORMATION:[1]

Type of Request: Three-year extensions of FERC Form Nos. 1, 1T, 1–F, 1–FT, 3–Q, and 3Q–T with no changes to the current reporting requirements.[2]

FERC Form No. 1, Annual Report of Major Electric Utilities, Licensees, and Others

OMB Control Nos. and Titles: 1902–0021 (FERC Form No. 1, Annual Report of Major Electric Utilities, Licensees, and Others) and 1902–0311 (FERC Form No. 1T, Annual Report of Major Electric Utilities, Licensees and Others—Modifications to Form 1 due to Final Rule in Docket No. RM19–12–000).

Abstract:

FERC Form No. 1, Annual Report of Major Electric Utilities, Licensees, and Others

FERC Form No. 1 is a comprehensive financial and operating report submitted annually for electric rate regulation, market oversight analysis, and financial audits by major electric utilities, licensees, and others. Major is defined as having in each of the last three consecutive calendar years, sales or transmission services that exceed one of the following: (1) One million megawatt-hours of total sales; (2) 100 megawatt-hours of sales for resale; (3) 500 megawatt-hours of power exchanges delivered; or (4) 500 megawatt-hours of wheeling for others (deliveries plus losses).[3]

FERC Form No. 1 is designed to collect financial and operational information and is made available to the public. FERC Form No. 1 includes a basic set of financial statements:

- Comparative Balance Sheet,
- Statement of Income,
- Statement of Retained Earnings,
- Statement of Cash Flows,
- Statements of Accumulated Comprehensive Income,
- Comprehensive Income, and Hedging Activities, and
- Notes to Financial Statements.

Supporting schedules contain:

- Supplementary information and outlines of corporate structure and governance,
- Information on formula rates, and
- Description of important changes during the year.

Other schedules provide:

- Information on revenues and the related quantities of electric sales and electricity transmitted,
- Account balances for all electric operation and maintenance expenses,
- Selected plant cost data, and
- Other statistical information.

XBRL, Order No. 859, and FERC Form No. 1

Previously, FERC Form No. 1 filers would transmit the information in the form to the Commission using a software application called Visual FoxPro (VFP). This application is no longer supported by its developer, Microsoft Corporation. As a result, in April 2015, the Commission issued an order announcing its intention to replace the VFP filing format for certain Commission forms (including FERC Form No. 1) with an eXtensible Markup Language (XML)-based filing format. On June 20, 2019, the Commission issued Order No. 859, which adopted eXtensible Business Reporting Language (XBRL) as the standard for filing FERC Form No. 1 and certain other Commission forms.[4]

Type of Respondent: Major electric utilities.

Estimate of Annual Burden:[5] The Commission estimates the annual burden and cost[6] for FERC Form No. 1 as follows:

[1] Due to expiration dates in 2019 for many of the Commission's financial forms, the renewal work for several of the forms was in process or pending at OMB during the 2019 Forms Refresh rulemaking effort in Docket No. RM19–12–000. The simultaneous OMB Paperwork Reduction Act processes required the assignment of alternate temporary information collection numbers (''T'') for some collections at the proposed and/or final rule stages. Accordingly, FERC Form Nos. 1T, 1–FT, and 3–QT represent the additional burden associated with the final rule in RM19–12–000. *Revisions to the Filing Process for Comm'n Forms,* Order No. 859, 167 FERC ¶ 61,241 (2019).

[2] For purposes of this notice, unless otherwise stated, FERC Form Nos. 1 and 1T are collectively referred to as ''FERC Form No. 1,'' FERC Form Nos. 1–F and 1–FT are collectively referred to as ''FERC Form No. 1–F,'' and FERC Form Nos. 3–Q (electric and natural gas) and 3–QT (electric and natural gas) are collectively referred to as ''FERC Form No. 3–Q.'' Because this renewal will incorporate the requirements and burden represented by the 1T, 1–FT, and 3–QT into FERC Form Nos. 1, 1–F, and 3–Q, respectively, it is anticipated that the Commission will eventually seek to retire the 1T, 1–FT, and 3–QT as duplicative.

[3] As detailed in 18 CFR 101 (Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provision of the Federal Power Act, General Instructions) and 18 CFR 141.1.

[4] *Revisions to the Filing Process for Comm'n Forms,* Order No. 859, 167 FERC ¶ 61,241 (2019).

[5] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to Title 5 Code of Federal Regulations 1320.3. The burden hours and costs are rounded for ease of presentation.

[6] The cost is based on FERC's 2021 Commission-wide average salary cost (salary plus benefits) of $87.00/hour. The Commission staff believes the FERC FTE (full-time equivalent) average cost for wages plus benefits is representative of the corresponding cost for the industry respondents.

Form 1 (1902-0021) and Form 1-T (1902-0311)						
Requirements	Number of Respondents 1	Average Annual Number of Responses per Respondent 2	Total Number of Responses (1)*(2)=(3)	Average Annual Burden (Hrs.) & Cost Per Response ($) 4	Total Average Annual Burden (Hrs.) & Total Annual Cost ($) (3)*(4)=(5)	Cost per Respondent ($) (5)÷(1)
Form 1	217	1	217	1,168 $101,616	253,456 $22,050,672	$101,616
Form 1-T	217	1	217	14 $1,218	3,038 $264,306	$1,218
Total					256,494 $22,314,978	$102,834

FERC Form No. 1–F, Annual Report for Nonmajor Public Utilities and Licensees

OMB Control Nos. and Titles: 1902–0029 (FERC Form No. 1–F, Annual Report for Nonmajor Public Utilities and Licensees) and 1902–0312 (FERC Form No. 1–FT, Annual Report for Nonmajor Public Utilities and Licensees, Modifications to FERC Form No. 1–F due to Final Rule in Docket No. RM19–12–000).

Abstract: FERC Form No. 1–F is a financial and operating report submitted annually for electric rate regulation, market oversight analysis, and financial audits by Nonmajor electric utilities and licensees. Nonmajor is defined as utilities and licensees that are not classified as Major, and having total sales in each of the last three consecutive years of 10,000 megawatt-hours or more.[7]

FERC Form No. 1–F is designed to collect financial and operational information and is made available to the public. FERC Form No. 1–F includes a basic set of financial statements:

- Comparative Balance Sheet,
- Statement of Retained Earnings,
- Statement of Cash Flows,
- Statement of Comprehensive Income and Hedging Activities, and
- Notes to Financial Statements.

Supporting schedules contain:

- Supplementary information and include revenues and the related quantities of electric sales and electricity transmitted,
- Account balances for all electric operation and maintenance expenses,
- Selected plant cost data, and
- Other statistical information.

XBRL, Order No. 859, and FERC Form No. 1–F

Previously, FERC Form No. 1–F filers would transmit the information in the form to the Commission using a software application called Visual FoxPro (VFP). This application is no longer supported by its developer, Microsoft Corporation. As a result, in April 2015, the Commission issued an order announcing its intention to replace the VFP filing format for certain Commission forms (including FERC Form No. 1–F) with an XML-based filing format. On June 20, 2019, the Commission issued Order No. 859, which adopted XBRL as the standard for filing FERC Form No. 1–F and other Commission forms.[8]

Type of Respondent: Nonmajor electric utilities.

Estimate of Annual Burden: The estimated annual burden and cost follow. (The estimated hourly cost used for FERC Form No. 1–F is $87 (for wages plus benefits) and is described above, under FERC Form No. 1.) The burden hours and costs are rounded for ease of presentation.

[7] As detailed in 18 CFR 101 (Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provision of the Federal Power Act, General Instructions) and 18 CFR 141.2.

[8] *Revisions to the Filing Process for Comm'n Forms,* Order No. 859, 167 FERC ¶ 61,241 (2019).

Form 1-F (1902-0029) and Form 1-FT (1902-0312)						
Requirements	Number of Respondents 1	Average Annual Number of Responses per Respondent 2	Total Number of Responses (1)*(2)=(3)	Average Annual Burden (Hrs.) & Cost Per Response ($) 4	Total Average Annual Burden (Hrs.) & Total Annual Cost ($) (3)*(4)=(5)	Cost per Respondent ($) (5)÷(1)
Form 1-F	2	1	2	122 $10,614	244 $21,228	$10,614
Form 1-FT	2	1	2	14 $1,218	28 $2,436	$1,218
Total					272 $23,664	$11,832

FERC Form No. 3–Q, Quarterly Financial Report of Electric Utilities, Licensees, and Natural Gas Companies

OMB Control Nos. and Titles: 1902–0205 (FERC Form No. 3–Q, Quarterly Financial Report of Electric Utilities, Licensees, and Natural Gas Companies) and 1902–0313 (FERC Form No. 3–QT, Quarterly Financial Report-Electric and Gas, modifications to FERC Form No. 3–Q due to Final Rule in Docket No. RM19–12–000).

Abstract: FERC Form No. 3–Q is a quarterly financial and operating report for rate regulation, market oversight analysis, and financial audits which supplements (a) FERC Form Nos. 1 and 1–F, for the electric industry, or (b) FERC Form No. 2 (Annual Report for Major Natural Gas Companies; OMB Control No. 1902–0028) and FERC Form No. 2–A (Annual Report for Nonmajor Natural Gas Companies; OMB Control No. 1902–0030), for the natural gas industry. FERC Form No. 3–Q is submitted for all Major and Nonmajor electric utilities, licensees, and natural gas companies.[9]

FERC Form No. 3–Q includes a basic set of financial statements:

- Comparative Balance Sheet,
- Statement of Income and Statement of Retained Earnings,
- Statement of Cash Flows,
- Statement of Comprehensive Income and Hedging Activities, and
- Supporting schedules containing supplementary information.

Electric respondents report:

- Revenues and the related quantities of electric sales and electricity transmitted,
- Account balances for all electric operation and maintenance expenses,
- Selected plant cost data, and
- Other statistical information.

Natural gas respondents report:

- Monthly and quarterly quantities of gas transported and associated revenues,
- Storage, terminalling, and processing services,
- Natural gas customer accounts and details of service, and
- Operational expenses, depreciation, depletion, and amortization of gas plant.

XBRL, Order No. 859, and FERC Form No. 3–Q

Previously, FERC Form No. 3–Q filers would transmit the information in the form to the Commission using a software application called Visual FoxPro (VFP). This application is no longer supported by its developer, Microsoft Corporation. As a result, in April 2015, the Commission issued an order announcing its intention to replace the VFP filing format for certain Commission forms (including FERC Form No. 3–Q) with an XML-based filing format. On June 20, 2019, the Commission issued Order No. 859, which adopted XBRL as the standard for filing these Commission forms.[10]

Type of Respondent: Major and nonmajor electric utilities, licensees, and natural gas companies.

Estimate of Annual Burden: The estimated annual burden and cost (as rounded) follow. (The estimated hourly cost used for FERC Form No. 3–Q is $87 (for wages plus benefits) and is described above, under FERC Form No. 1.) The burden hours and costs are rounded for ease of presentation. The quarterly filings are generally a subset of the annual filings. For this reason, the XBRL burden (''3–QT'') hours are ''0'' because the burden associated with the 3–QT is already incorporated into other burden numbers for FERC Form No. 1 and FERC Form No. 2.

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[9] 18 CFR 260.1(b) states that for natural gas companies as defined by the Natural Gas Act, Major pertains to a company whose combined gas transported or stored for a fee exceed 50 million Dth in each of the three previous calendar years. 18 CFR 260.2(b) states that for natural gas companies as defined by the Natural Gas Act, Non-Major pertains to a company not meeting the filing threshold for FERC Form No. 2, but having total gas sales or volume transactions exceeding 200,000 Dth in each of the three previous calendar years.

[10] *Revisions to the Filing Process for Comm'n Forms,* Order No. 859, 167 FERC ¶ 61,241 (2019).

Form 3-Q (Electric) (1902-0205) and Form 3-QT (1902-0313)						
Requirements	Number of Respondents 1	Average Annual Number of Responses per Respondent 2	Total Number of Responses (1)*(2)=(3)	Average Annual Burden (Hrs.) & Cost Per Response ($) 4	Total Average Annual Burden (Hrs.) & Total Annual Cost ($) (3)*(4)=(5)	Cost per Respondent ($) (5)÷(1)
Form 3-Q (Electric)	221	3	663	168 $14,616	111,384 $9,690,408	$43,848
Form 3-QT (Electric)	221	3	663	0 $0	0 $0	$0
Total					111,384 $9,690,408	$43,848

Form 3-Q (Gas) (1902-0205) and Form 3-QT (1902-0313)						
Requirements	Number of Respondents 1	Average Annual Number of Responses per Respondent 2	Total Number of Responses (1)*(2)=(3)	Average Annual Burden (Hrs.) & Cost Per Response ($) 4	Total Average Annual Burden (Hrs.) & Total Annual Cost ($) (3)*(4)=(5)	Cost per Respondent ($) (5)÷(1)
Form 3-Q (Gas)	147	3	441	167 $14,529	73,647 $6,407,289	$43,587
Form 3-QT (Gas)	147	3	441	0 $0	0 $0	$0
Total					73,647 $6,407,289	$43,587

For the FERC Form 3–Q (electric and natural gas), the total average annual burden hours is 185,031, and the total annual cost is $16,097,697.

Comments: Comments are invited on: (1) Whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collections of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information collections; and (4) ways to minimize the burden of the collections of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: November 18, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–25683 Filed 11–23–21; 8:45 am]

BILLING CODE 6717–01–C

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: CP19–491–001.

Applicants: National Fuel Gas Supply Corporation.

Description: Request for Approval of Capacity Lease Agreement Amendment between National Fuel Gas Supply Corporation under CP19–491 and Transcontinental Gas Pipe Line Company, LLC.

Filed Date: 11/17/2021.

Accession Number: 20211117–5159.

Comment Date: 5 p.m. ET 11/23/21.

Docket Numbers: RP22–327–000.

Applicants: National Fuel Gas Supply Corporation.

Description: Compliance filing: TSCA—Informational Filing (November 2021) to be effective N/A.

Filed Date: 11/18/21.

Accession Number: 20211118–5049.

Comment Date: 5 p.m. ET 11/30/21.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and

385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP22–328–000.
Applicants: Sierrita Gas Pipeline LLC.
Description: Compliance filing: Sierrita Operational Purchase and Sales Report 2021 to be effective N/A.
Filed Date: 11/18/21.
Accession Number: 20211118–5079.
Comment Date: 5 p.m. ET 11/30/21.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 18, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–25671 Filed 11–23–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 553–238]

City of Seattle, Washington; Notice of Availability of Final Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed an application submitted by the City of Seattle, Washington to construct a replacement fuel dock and associated infrastructure at Diablo Lake at the Skagit River Project No. 553. The Skagit River Project is located on the Skagit River in Snohomish, Skagit, and Whatcom counties, Washington. The project occupies a portion of the Ross Lake National Recreation Area administered by the U.S. National Park Service and the Mount Baker National Forest administered by the U.S. Forest Service.

A Final Environmental Assessment (FEA) has been prepared as part of staff's review of the proposal.[1] The FEA contains the Commission staff's analysis of the probable environmental effects of the proposed action and concludes that approval of the proposal, with Commission staff's recommended measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

The FEA may be viewed on the Commission's website at *http://www.ferc.gov* using the ''elibrary'' link. Enter the docket number (P–553) 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 FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3372, or for TTY, (202) 502–8659.

Dated: November 18, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–25682 Filed 11–23–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP21–474–000]

Rover Pipeline LLC; Notice of Schedule for Environmental Review of the North Coast Interconnect Project

On July 20, 2021, Rover Pipeline LLC (Rover) filed an application in Docket No. CP21–474 requesting a Certificate of Public Convenience and Necessity pursuant to Section 7(c) of the Natural Gas Act to construct and operate certain natural gas pipeline facilities. The proposed project is known as the North Coast Interconnect Project (Project), whereby Rover would construct and operate a new delivery point on Rover's mainline in Seneca County, Ohio. The Rover-North Coast Interconnect would receive up to 108,000 dekatherms per day of pipeline quality natural gas from an interconnect with North Coast's gathering system.

On August 2, 2021, the Federal Energy Regulatory Commission (Commission or FERC) issued its Notice of Application for the Project. Among other things, that notice alerted agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on a request for a federal authorization within 90 days of the date of issuance of the Commission staff's Environmental Assessment (EA) for the Project. This instant notice identifies the FERC staff's planned schedule for the completion of the EA for the Project.

Schedule for Environmental Review

Issuance of EA—January 27, 2022
90-day Federal Authorization Decision Deadline—April 27, 2022

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Project Description

The North Coast Interconnect Project would consist of Rover constructing and operating a new hot tap, valve, and approximately 140 feet of 6-inch-diameter interconnect piping to connect the Rover Mainline B at milepost 19.5 to new metering facilities to be constructed by North Coast Gas Transmission.

Background

On September 8, 2021, the Commission issued a *Notice of Scoping Period Requesting Comments on Environmental Issues for the Proposed North Coast Interconnect Project* (NOS). The NOS was sent to affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. In response to the NOS, the Commission received comments from the U.S. Fish and Wildlife Service and the U.S. Environmental Protection Agency. The primary issues raised by the U.S. Fish and Wildlife Service concerned wetlands protection, revegetation with pollinator species, the potential presence of listed bat species, and the protection of bald eagles and migratory bird species. The U.S. Environmental Protection Agency commented on identifying the Project purpose and need; and assessing impacts on

[1] On July 16, 2020, the Council on Environmental Quality (CEQ) issued a final rule, *Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act* (Final Rule, 85 FR 43,304), which was effective as of September 14, 2020; however, the NEPA review of this project was in process at that time and was prepared pursuant to CEQ's 1978 NEPA regulations.

socioeconomics and environmental justice communities, greenhouse gas emissions, climate change, surface and groundwater quality, and karst terrain. All substantive comments will be addressed in the EA.

Additional Information

In order to receive notification of the issuance of the EA and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC website (*www.ferc.gov*). Using the ''eLibrary'' link, select ''General Search'' from the eLibrary menu, enter the selected date range and ''Docket Number'' excluding the last three digits (*i.e.,* CP21–474), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: November 17, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–25620 Filed 11–23–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC22–5–000]

Commission Information Collection Activities (FERC Form Nos. 60, 60A, FERC–61, and FERC–555A); Consolidated Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice of information collections and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collections, FERC Form Nos. 60 and 60A (Annual Report of Centralized Service Companies), FERC–61 (Narrative Description of Service Company Functions), and FERC–555A (Preservation of Records Companies and Service Companies Subject to PUHCA).

DATES: Comments on the collections of information are due January 24, 2022.

ADDRESSES: You may submit comments (identified by Docket No. IC22–5–000 and the form) by either of the following methods:

- *Electronic Filing:* Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.
- For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery:
  - ○ *Mail via U.S. Postal Service only, addressed to:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.
  - ○ *Hand (including courier) delivery to:* Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Please reference the specific collection number and/or title in your comments.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at (866) 208–3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* and telephone at (202) 502–8663.

SUPPLEMENTARY INFORMATION:[1]

Type of Request: Three-year extension of the information collection requirements for FERC Form Nos. 60 and 60A, FERC–61, and FERC–555A with no changes to the current reporting requirements. Please note the three collections (60 including 60A, 61, and 555A) are distinct.[2]

FERC Form No. 60 (Annual Report of Centralized Service Companies), FERC–61 (Narrative Description of Service Company Functions), and FERC–555A (Preservation of Records Companies and Service Companies Subject to PUHCA)

OMB Control Nos. and Titles: 1902–0215 ((FERC Form Nos. 60 (Annual Report of Centralized Service Companies), FERC–61 (Narrative Description of Service Company Functions), and FERC–555A (Preservation of Records Companies and Service Companies Subject to PUHCA)), and 1902–0308 (FERC Form No. 60A, Annual Report of Centralized Service Companies—Modifications to FERC Form No. 60 due to Final Rule in Docket No. RM19–12–000).

Abstract: In accordance with the Energy Policy Act of 2005 (EPAct 2005), the Commission implemented the repeal of the Public Utility Holding Company Act of 1935 (PUHCA 1935) and implemented the provisions of a newly enacted Public Utility Holding Company Act 2005 (PUHCA 2005). Pursuant to PUHCA 2005, the Commission requires centralized service companies to file FERC Form No. 60, unless the company is exempted or granted a waiver pursuant to the Commission's regulations. The information collected in FERC Form No. 60 enables better monitoring for cross-subsidization, and aids the Commission in carrying out its statutory responsibilities. In addition, centralized service companies are required to follow the Commission's preservation of records requirements for centralized service companies.

FERC Form No. 60

FERC Form No. 60 is an annual reporting requirement for centralized service companies set forth in 18 CFR 366.23. The report's function is to collect financial information (including balance sheet, assets, liabilities, billing and charges for associated and non-associated companies) from centralized service companies subject to the Commission's jurisdiction. Unless the Commission exempts or grants a waiver

[1] Due to expiration dates in 2019 for many of the Commission's financial forms, the renewal work for several of the forms was in process or pending at OMB during the 2019 Forms Refresh rulemaking effort in Docket No. RM19–12–000. The simultaneous OMB processes required the assignment of alternate temporary information collection numbers (*e.g.,* 60A) at the NOPR and/or final rule stages. Accordingly, FERC Form No. 60A represents the additional burden associated with the final rule in RM19–12–000. *Revisions to the Filing Process for Comm'n Forms,* Order No. 859, 167 FERC ¶ 61,241 (2019).

[2] For purposes of this notice, unless otherwise stated, FERC Form Nos. 60 and 60A are collectively referred to as ''FERC Form No. 60.'' Because this renewal will incorporate the requirements and burden represented by FERC Form No. 60A into FERC Form No. 60, it is anticipated that the Commission will eventually seek to retire the 60A as duplicative.

pursuant to 18 CFR 366.3 and 366.4 to the holding company system, every centralized service company in a holding company system must prepare and file electronically with the Commission the FERC Form No. 60, pursuant to the General Instructions in the form.

FERC–61

FERC–61 is a filing requirement for service companies in holding company systems (including special purpose companies) that are currently exempt or granted a waiver of FERC's regulations and would not have to file FERC Form No. 60. Instead, those service companies are required to file, on an annual basis, a narrative description of the service company's functions during the prior calendar year (FERC–61). In complying, a holding company may make a single filing on behalf of all of its service company subsidiaries.

FERC–555A

The Commission's regulations prescribe a mandated preservation of records requirements for holding companies and service companies (unless otherwise exempted by FERC). This requires them to maintain and make available to FERC, their books and records. The preservation of records requirement provides for uniform records retention by holding companies and centralized service companies subject to PUHCA 2005.

Data from FERC Form No. 60, FERC–61, and FERC–555A provide a level of transparency that: (1) Helps protect ratepayers from pass-through of improper service company costs, (2) enables the Commission to review and determine cost allocations (among holding company members) for certain non-power goods and services, (3) aids the Commission in meeting its oversight and market monitoring obligations, and (4) benefits the public, both as ratepayers and investors. In addition, the Commission's audit staff uses these records during compliance reviews and special analyses.

If data from FERC Form No. 60, FERC–61, and FERC–555A were not available, it would be difficult for the Commission to meet its statutory responsibilities under EPAct 1992, EPAct of 2005, and PUHCA 2005, and the Commission would have fewer of the regulatory mechanisms necessary to ensure transparency and protect ratepayers.

XBRL, Order No. 859, and FERC Form No. 60

Previously, FERC Form No. 60 filers would transmit the information in the form to the Commission using a software application called Visual FoxPro (VFP). This application is no longer supported by its developer, Microsoft Corporation. As a result, in April 2015, the Commission issued an order announcing its intention to replace the VFP filing format for certain Commission forms (including FERC Form No. 60) with an eXtensible Markup Language (XML)-based filing format. On June 20, 2019, the Commission issued Order No. 859, which adopted eXtensible Business Reporting Language (XBRL) as the standard for filing FERC Form No. 60 and certain other Commission forms.[3]

Type of Respondent: Centralized service companies.

Estimate of Annual Burden:[4] The Commission estimates the annual public reporting burden and cost[5] (rounded in the tables) for the information collection as:

Form 60 (1902-0215) and Form 60A (1902-0308)						
Requirements	Number of Respondents 1	Average Annual Number of Responses per Respondent 2	Total Number of Responses (1)*(2)=(3)	Average Annual Burden (Hrs.) & Cost Per Response ($) 4	Total Average Annual Burden (Hrs.) & Total Annual Cost ($) (3)*(4)=(5)	Cost per Respondent ($) (5)÷(1)
Form 60	42	1	42	75 $6,525	3,150 $274,050	$6,525
Form 60A	42	1	42	3 $261	126 $10,962	$261
Total					3,276 $285,012	$6,786

[3] *Revisions to the Filing Process for Comm'n Forms,* Order No. 859, 167 FERC ¶ 61,241 (2019).

[4] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to Title 5 Code of Federal Regulations 1320.3. The burden hours and costs are rounded for ease of presentation.

[5] The cost for the Form 60 and FERC–61 is based on FERC's 2021 Commission-wide average salary cost (salary plus benefits) of $87.00/hour. The Commission staff believes the FERC FTE (full-time equivalent) average cost for wages plus benefits is representative of the corresponding cost for the industry respondents. For the FERC–555A, the $35.83 hourly cost figure comes from the average cost (wages plus benefits) of a file clerk (Occupation Code 43–4071) as posted on the BLS website (*http://www.bls.gov/oes/current/naics2_22.htm*).

FERC-61 (1902-0215)						
Requirements	Number of Respondents 1	Average Annual Number of Responses per Respondent 2	Total Number of Responses (1)*(2)=(3)	Average Annual Burden (Hrs.) & Cost Per Response ($) 4	Total Average Annual Burden (Hrs.) & Total Annual Cost ($) (3)*(4)=(5)	Cost per Respondent ($) (5)÷(1)
FERC-61	80	1	80	0.5 $44	40 $3,520	$44
Total					40 $3,520	$44

FERC-555A (1902-0215)						
Requirements	Number of Respondents 1	Average Annual Number of Responses per Respondent 2	Total Number of Responses (1)*(2)=(3)	Average Annual Burden (Hrs.) & Cost Per Response ($) 4	Total Average Annual Burden (Hrs.) & Total Annual Cost ($) (3)*(4)=(5)	Cost per Respondent ($) (5)÷(1)
FERC-555A	122	1	122	1,080 $38,696	131,760 $4,720,912	$38,696
Total					131,760 $4,720,912	$38,696

FERC-555A Record Retention			
	Total Number of Responses (1)*(2)=(3)	Cost Per Respondent -4	Total Annual Cost (3)*(4)=(5)
Paper Storage	122	$387.60	$47,287
Electronic Storage	122	$15.25	$1,861
Total Storage Burden		$402.85	$49,148

Total Annual Cost: $5,009,444 (Paperwork Burden) + $49,148 (Record Retention storage cost) = $5,058,592.

A more granular breakdown of the FERC–60/61/555A cost categories follows:

Labor Cost: The total estimated annual cost for labor burden to respondents is $5,009,444 [$285,012 (FERC Form No. 60) + $3,520 (FERC–61) + $4,720,912 (FERC–555A)].

FERC Form No. 60: 42 respondents × $6,786 per respondent = $285,012.

FERC–61: 80 respondents × $44 per respondent = $3,520.

FERC–555A: 122 respondents × $38,696 per respondent = $4,720,912.

Storage Cost:[6] In addition to the labor (burden cost provided above), there are additional costs that represent record retention and storage costs:

- *Paper storage costs (using an estimate of 60 cubic feet × $6.46 per cubic foot):* $387.60 per respondent annually. Total annual paper storage cost to industry ($387.60 × 122 respondents): $47,287. This estimate assumes that a respondent stores the same volume of paper as it did in the past and that the cost of such storage has not changed. We expect that this estimate should trend downward over time as more companies move away from paper storage and rely more heavily on electronic storage.

[6] Internal analysis assumes 50% paper storage and 50% electronic storage.

• *Electronic storage costs:* $15.25 per respondent annually. Total annual electronic storage cost to industry ($15.25 × 122 respondents): $1,861. This calculation retains the previous estimate that storage of 1GB per year is $15.25. We expect that this estimate should trend downward over time as the cost of electronic storage technology, including cloud storage, continues to decrease. For example, external hard drives of approximately 500GB are available for approximately $50. In addition, cloud storage plans from multiple providers for 1TB of storage (with a reasonable amount of requests and data transfers) are available for less than $35 per month.

Comments: Comments are invited on: (1) Whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collections of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information collections; and (4) ways to minimize the burden of the collections of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–25675 Filed 11–23–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD22–4–000]

Improving Winter-readiness of Generating Units; Notice of Technical Conference

Take notice that the Federal Energy Regulatory Commission (Commission) will convene a Joint Technical Conference with NERC and the Regional Entities in the above-referenced proceeding on Thursday, April 28, 2022 from approximately 9:00 a.m. to 5:00 p.m. Eastern time. The conference will be held either in-person—at the Commission's headquarters at 888 First Street NE, Washington, DC 20426 in the Commission Meeting Room (with a WebEx option available)—or electronically.

The purpose of this conference is to discuss how to improve the winter-readiness of generating units, including best practices, lessons learned and increased use of the NERC Guidelines, as recommended in the Joint February 2021 Cold Weather Outages Report.[1]

The conference will be open for the public to attend, and there is no fee for attendance. Supplemental notices will be issued prior to the conference with further details regarding the agenda, how to register to participate, and the format (including whether the technical conference will be held in-person or electronically). Information on this technical conference will also be posted on the Calendar of Events on the Commission's website, *www.ferc.gov,* prior to the event.

The conference will also be transcribed. Transcripts will be available for a fee from Ace Reporting, (202) 347–3700.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov,* call toll-free (866) 208–3372 (voice) or (202) 208–8659 (TTY), or send a fax to (202) 208–2106 with the required accommodations.

For more information about this technical conference, please contact Lodie White at *Lodie.White@ferc.gov* or (202) 502–8453. For information related to logistics, please contact Sarah McKinley at *Sarah.Mckinley@ferc.gov* or (202) 502–8368.

Dated: November 18, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–25674 Filed 11–23–21; 8:45 am]

BILLING CODE 6717–01–P

[1] *See The February 2021 Cold Weather Outages in Texas and the South Central United States—FERC, NERC and Regional Entity Staff Report* at pp 18, 192 (November 16, 2021). file:///C:/Users/ldwer41/Documents/Technical%20Conference%20on%20Improving%20Generating%20Units%20Winter-Readiness/The%20February%202021%20Cold%20Weather%20Outages%20Final%20Report.pdf.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP21–45–000]

Florida Gas Transmission, LLC; Notice of Availability of the Draft Environmental Impact Statement for the Proposed Big Bend Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental impact statement (EIS) for the Big Bend (Project), proposed by Florida Gas Transmission Company, LLC (FGT) in the above-referenced docket. The Project would increase FGT's certificated capacity by 29,000 million British thermal units per day (MMBtu/d) and is designed to serve the expanding need for additional firm transportation service in Hillsborough County, Florida for current and future electricity generation.

FGT also requests approval to construct/modify certain mainline pipeline and appurtenant facilities including installation of new pipeline loops located on FGT's existing pipeline system in Calhoun and Jefferson Counties, Florida, and compression facilities located in Gadsden, Gilchrist, Santa Rosa, and Taylor Counties, Florida.

The draft EIS assesses the potential environmental effects of the construction and operation of the Project in accordance with the requirements of the National Environmental Policy Act (NEPA). As described in the draft EIS, the FERC staff concludes that approval of the Project would result in some adverse environmental impacts; however, with the exception of climate change impacts, these impacts would be reduced to less-than-significant levels because of the impact avoidance, minimization, and mitigation measures proposed by FGT and those recommended by staff in the EIS. FERC staff is unable to determine significance with regards to climate change impacts.

The Project would consist of the following facilities in Florida:

• West Loop—installing approximately 1.7 miles of 36-inch-diameter pipe looping[1] in Calhoun County;

• East Loop—installing approximately 1.5 miles of 36-inch-diameter pipe looping in Jefferson County;

• Calhoun Receiver Station Relocation—remove the existing 36-inch-diameter mainline pig[2] receiver located at the beginning of the West Loop and relocate to a proposed pig receiver site to be installed at the terminus of the proposed West Loop in Calhoun County;

• Jefferson Receiver Station Relocation—remove the existing 36-inch-diameter mainline loop pig receiver located at the beginning of the East Loop and relocate to a proposed pig

[1] A pipeline loop is a segment of pipe constructed parallel to an existing pipeline to increase capacity.

[2] A ''pig'' is a tool that the pipeline company inserts into and pushes through the pipeline for cleaning the pipeline, conducting internal inspections, or other purposes.

receiver site to be installed at the terminus of the proposed East Loop in Jefferson County;

• Compressor Station 12—upgrade an existing natural gas-fired compressor turbine (Unit 1207) from 15,000 horsepower (HP) to16,000 HP at FGT's existing Compressor Station 12, located in Santa Rosa County;

• Compressor Station 14—upgrade an existing natural gas-fired compressor turbine (Unit 1409) from 20,500 HP to 23,500 HP at FGT's existing Compressor Station 14, located in Gadsden County;

• Compressor Station 15—upgrade an existing natural gas-fired compressor turbine (Unit 1507) from 15,000 HP to 16,000 HP at FGT's existing Compressor Station 15, located in Taylor County; and

• Compressor Station 24—upgrade an existing natural gas-fired compressor turbine (Unit 2403) from 20,500 HP to 23,500 HP at FGT's existing Compressor Station 24, located in Gilchrist County.

The Commission mailed a copy of the Notice of Availability of the draft EIS to federal, state, and government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners; other interested individuals and groups; and newspapers and libraries in the project area. The EIS is only available in electronic format. It may be viewed and downloaded from the FERC's website (*www.ferc.gov*), on the natural gas environmental documents page *https://www.ferc.gov/industries/gas/enviro/eis.asp*). In addition, the EIS can be accessed by using the eLibrary link on the FERC's website. Click on the eLibrary link (*https://www.ferc.gov/docs-filing/elibrary.asp*), click on General Search, and enter the docket number in the ''Docket Number'' field (*i.e.,* CP21–45). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

The EIS is not a decision document. It presents Commission staff's independent analysis of the environmental issues for the Commission to consider when addressing the merits of all issues in this proceeding. Any person wishing to comment on the EIS may do so. Your comments should focus on the EIS's disclosure and discussion of potential environmental effects, measures to avoid or lessen environmental impacts, and the completeness of the submitted alternatives, information and analyses. The more specific your comments, the more useful they would be. To ensure that the Commission has the opportunity to consider your comments prior to making its decision on this project, it is important that we receive your comments in Washington, DC on or before 5:00 p.m. Eastern Time on January 10, 2022.

For your convenience, there are three methods you can use to file your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the eComment feature on the Commission's website (*www.ferc.gov*) under the link to FERC Online. This is an easy method for submitting brief, text-only comments on a project;

(2) You can also file your comments electronically using the eFiling feature on the Commission's website (*www.ferc.gov*) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the project docket number (CP21–45–000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR part 385.214). Motions to intervene are more fully described at *https://www.ferc.gov/how-guides.* Only intervenors have the right to seek rehearing or judicial review of the Commission's decision. The Commission grants affected landowners and others with environmental concerns intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which no other party can adequately represent. Simply filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered.

Additional information about the Project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website (*www.ferc.gov*) using the eLibrary link. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Dated: November 18, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–25678 Filed 11–23–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC22–4–000]

Commission Information Collection Activities (FERC Form Nos. 6, 6T, 6–Q, and 6–QT); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice of information collections and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995 (PRA), the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collections, FERC Form Nos. 6 and 6T (Annual Report of Oil Pipeline Companies) and 6–Q and 6–QT (Quarterly Report of Oil Pipeline Companies).

DATES: Comments on the collections of information are due January 24, 2022.

ADDRESSES: You may submit comments (identified by Docket No. IC22–4–000 and the form) by either of the following methods:

• *Electronic Filing:* Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.

• For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery:

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

○ Hand (including courier) delivery to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov*. For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at (866) 208–3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* and telephone at (202) 502–8663.

SUPPLEMENTARY INFORMATION:[1]

Titles: FERC Form Nos. 6 and 6T (Annual Report of Oil Pipeline Companies), 6–Q and 6–QT (Quarterly Report of Oil Pipeline Companies).

OMB Control Nos.: 1902–0022 (FERC Form No. 6), 1902–0206 (FERC Form No. 6–Q), 1902–0314 (FERC Form No. 6T), and 1902–0310 (FERC Form No. 6–QT).

Type of Respondent: Oil pipelines.

Type of Request: Three-year extensions of FERC Form Nos. 6, 6T, 6–Q, and 6–QT information collections with no changes to the current reporting and recordkeeping requirements.[2]

Abstract: Under the Interstate Commerce Act (ICA),[3] the Commission is authorized and empowered to make investigations and to collect and record data to the extent the Commission may consider to be necessary or useful for the purpose of carrying out the provisions of the ICA. The Commission must ensure just and reasonable rates for transportation of crude oil and petroleum products by pipelines in interstate commerce.

FERC Form No. 6, Annual Report of Oil Pipeline Companies

In 1977, the Department of Energy Organization Act transferred to the Commission from the Interstate Commerce Commission (ICC) the responsibility to regulate oil pipeline companies. In accordance with the transfer of authority, the Commission was delegated the responsibility to require oil pipelines to file annual reports of information necessary for the Commission to exercise its statutory responsibilities.[4] The transfer included the ICC Form P, the predecessor to FERC Form No. 6.[5]

To reduce burden on industry, FERC Form No. 6 has three tiers of reporting requirements:

1. Each oil pipeline carrier whose annual jurisdictional operating revenues has been $500,000 or more for each of the three previous calendar years must file FERC Form No. 6 (18 CFR 357.2 (a)). Oil pipeline companies subject to the provisions of section 20 of the ICA must submit FERC Form No. 6–Q. (18 CFR 357.4(b)). Newly established entities must use projected data to determine whether FERC Form No. 6 must be filed.

2. Oil pipeline carriers exempt from filing FERC Form No. 6 whose annual jurisdictional operating revenues have been more than $350,000 but less than $500,000 for each of the three previous calendar years must prepare and file page 301, ''Operating Revenue Accounts (Account 600),'' and page 700, ''Annual cost of Service Based Analysis Schedule,'' of FERC Form No. 6. When submitting pages 301 and 700, each exempt oil pipeline carrier must include page 1 of FERC Form No. 6, the Identification and Attestation schedule (18 CFR 357.2 (a)(2)).

3. Oil pipeline carriers exempt from filing FERC Form No. 6 and pages 301 and whose annual jurisdictional operating revenues were $350,000 or less for each of the three previous calendar years must prepare and file page 700, ''Annual Cost of Service Based Analysis Schedule,'' of FERC Form No. 6. When submitting page 700, each exempt oil pipeline carrier must include page 1 of FERC Form No. 6, the Identification and Attestation schedule (18 CFR 357.2 (a)(3)).

The Commission uses the data in FERC Form Nos. 6 and 6–Q to perform audits and reviews on the financial condition of oil pipelines; assess energy markets; conduct oil pipeline rate proceedings and economic analysis; conduct research for use in administrative litigation; and administer the requirements of the ICA. Data from FERC Form No. 6 facilitates the calculation of the actual rate of return on equity for oil pipelines. The actual rate of return on equity is particularly useful information when evaluating a pipeline's rates.

The Commission also uses data on Page 301 of FERC Form No. 6 to compute annual charges which are then assessed against oil pipeline companies to recover the Commission's annual costs as mandated by Order No. 472. The annual charges are required by Section 3401 of the Omnibus Budget Reconciliation Act of 1986.

Furthermore, the majority of state regulatory commissions use FERC Form Nos. 6 and 6–Q and the Commission's Uniform System of Accounts (USofA) to satisfy their reporting requirements for those companies under their jurisdiction. In addition, the public uses the data in FERC Form Nos. 6 and 6–Q to assist in monitoring rates, the financial condition of the oil pipeline industry, and in assessing energy markets.

FERC Form No. 6–Q, Quarterly Financial Report of Oil Pipeline Companies

The Commission uses the information collected in FERC Form No. 6–Q to carry out its responsibilities in implementing the statutory provisions of the ICA to include the authority to prescribe rules and regulations concerning accounts, records, and memoranda, as necessary or appropriate. Financial accounting and reporting provides necessary information concerning a company's past performance and its future prospects. Without reliable financial

[1] Due to expiration dates in 2019 for many of the Commission's financial forms, the renewal work for several of the forms was in process or pending at OMB during the 2019 Forms Refresh rulemaking effort in Docket No. RM19–12–000. The simultaneous OMB processes required the assignment of alternate temporary information collection numbers (''T'') at the NOPR and/or final rule stages. Accordingly, FERC Form Nos. 6T and 6–QT represent the additional burden associated with final rule in RM19–12–000. *Revisions to the Filing Process for Comm'n Forms,* Order No. 859, 167 FERC ¶ 61,241 (2019).

[2] For purposes of this notice, unless otherwise stated, FERC Form Nos. 6 and 6T are collectively referred to as ''FERC Form No. 6'' and FERC Form Nos. 6Q and 6–QT are collectively referred to as ''FERC Form No. 6Q.'' Because this renewal will incorporate the requirements and burden represented by the 6T and 6–QT into FERC Form Nos. 6 and 6Q, respectively, it is anticipated that the Commission will eventually seek to retire the 6T and 6–QT as duplicative.

[3] 49 U.S.C. Part 1, Section 20, 54 Stat. 916.

[4] Section 402(b) of the Department of Energy Organization Act (DOE Act), 42 U.S.C. 7172 provides that; ''[t]here are hereby transferred to, and vested in, the Commission all functions and authority of the Interstate Commerce Commission or any officer or component of such Commission where the regulatory function establishes rates or charges for the transportation of oil by pipeline or established the valuation of any such pipeline.''

[5] The ICC developed the Form P to collect information on an annual basis to enable it to carry out its regulation of oil pipeline companies under the Interstate Commerce Act. A comprehensive review of the reporting requirements for oil pipeline companies was performed on September 21, 1982, when the Commission issued Order 260 revising the former ICC Form P, ''Annual Report of Carriers by Pipeline'' and redesignating it as FERC Form No. 6, ''Annual Report of Oil Pipeline Companies''.

statements prepared in accordance with the Commission's USofA and related regulations, it would be difficult for the Commission to accurately determine the costs that relate to a particular time period, service, or line of business.

The Commission uses data from FERC Form No. 6–Q to assist in: (1) Implementation of its financial audits and programs; (2) continuous review of the financial condition of regulated companies; (3) assessment of energy markets; and (4) rate proceedings and economic analyses.

Financial information reported on the quarterly FERC Form No. 6–Q provides the Commission, as well as customers, investors and others, an important tool to help identify emerging trends and issues affecting jurisdictional entities within the energy industry. It also provides timely disclosures of the impacts that new accounting standards, or changes in existing standards, have on jurisdictional entities, as well as the economic effects of significant transactions, events, and circumstances. The reporting of this information by jurisdictional entities assists the Commission in its analysis of profitability, efficiency, risk, and in its overall monitoring.

XBRL, Order No. 859 and FERC Form Nos. 6 and 6–Q

Previously, FERC Form Nos. 6 and 6–Q filers would transmit the information in the forms to the Commission using a software application called Visual FoxPro (VFP). This application is no longer supported by its developer, Microsoft Corporation. As a result, in April 2015, the Commission issued an order announcing its intention to replace the VFP filing format for certain Commission forms (including FERC Form Nos. 6 and 6–Q) with an eXtensible Markup Language (XML)-based filing format. On June 20, 2019, the Commission issued Order No. 859, which adopted XBRL as the standard for filing FERC Form Nos. 6 and 6–Q and certain other Commission forms.[6]

FERC Form Nos. 6 and 6–Q

Estimates of Annual Burden[7] *and Cost:*[8]

Form 6 (1902-0022) and Form 6-T (1902-0314)						
Requirements	**Number of Respondents** 1	**Average Annual Number of Responses per Respondent** 2	**Total Number of Responses** (1)*(2)=(3)	**Average Annual Burden Hrs. & Cost Per Response** 4	**Total Average Annual Burden Hours & Total Annual Cost** (3)*(4)=(5)	**Cost per Respondent ($)** (5)÷(1)
				161	42,182	
Form 6	262	1	262	$14,007	$3,669,834	$14,007
				14	3,668	
Form 6-T	262	1	262	$1,218	$319,116	$1,218
Total			262		45,850	Hours
					$3,988,950	Total Burden
					$15,225	Respondent Burden

[6] Revisions to the Filing Process for Comm'n Forms, Order No. 859, 167 FERC ¶ 61,241 (2019).

[7] ''Burden'' is the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to Title 5 Code of Federal Regulations 1320.3. The burden hours and costs are rounded for ease of presentation.

[8] The cost is based on FERC's 2021 Commission-wide average salary cost (salary plus benefits) of $87.00/hour. The Commission staff believes the FERC FTE (full-time equivalent) average cost for wages plus benefits is representative of the corresponding cost for the industry respondents.

Form 6Q (1902-0206) and Form 6-QT (1902-0310)						
Requirements	Number of Respondents 1	Average Annual Number of Responses per Respondent 2	Total Number of Responses (1)*(2)=(3)	Average Annual Burden Hrs. & Cost Per Response 4	Total Average Annual Burden Hours & Total Annual Cost (3)*(4)=(5)	Cost per Respondent ($) (5)÷(1)
				150	117,900	
Form 6-Q	262	3	786	$13,050	$10,257,300	$39,150
				0	0	
Form 6-QT	0	0	0	$0	$0	$0
Total			786		117,900	Hours
					$10,257,300	Total Burden
					$39,150	Respondent Burden

The quarterly filings are generally a subset of the annual filings. For this reason, the XBRL burden (''6–QT'') hours are ''0'' because the burden associated with the 6–QT is already incorporated into other burden numbers for FERC Form No. 6.

Comments: Comments are invited on: (1) Whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collections of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information collections; and (4) ways to minimize the burden of the collections of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: November 18, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–25673 Filed 11–23–21; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2021–0080; FRL–8795–05–OCSPP]

Pesticide Product Registration; Receipt of Applications for New Uses (November 2021)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received applications to register new uses for pesticide products containing currently registered active ingredients. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

DATES: Comments must be received on or before December 27, 2021.

ADDRESSES: Submit your comments, identified by docket identification (ID) number and the File Symbol of interest as shown in the body of this document, online at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets/about-epa-dockets.*

Due to the public health concerns related to COVID–19, the EPA/DC and Reading Room is closed to visitors with limited exceptions. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on the EPA/DC and docket access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Charles Smith, Biopesticides and Pollution Prevention Division (7511P), main telephone number: (703) 305–7090; email address: *BPPDFRNotices@epa.gov,* Anita Pease, Antimicrobials Division (7510P), main telephone number: (703) 305–7090; email address: *ADFRNotices@epa.gov.* The mailing address for each contact person is: Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each application summary.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a

copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *https://www.epa.gov/dockets/commenting-epa-dockets.*

II. Registration Applications

EPA has received applications to register new uses for pesticide products containing currently registered active ingredients. Pursuant to the provisions of FIFRA section 3(c)(4) (7 U.S.C. 136a(c)(4)), EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by the Agency on these applications.

Notice of Receipt—New Uses

1. *EPA Registration Number:* 79814–5. *Docket ID number:* EPA–HQ–OPP–2021–0516. *Applicant:* ICA TriNova, LLC. 1 Beavers Street, Suite B, Newman, GA 30263. *Active ingredient:* Sodium Chlorite. *Product type:* Post-Harvest Treatment, Fungicide, Bactericide, Antimicrobial. *Proposed use:* Post-harvest application of gaseous chlorine dioxide to 14 new crop groups: Crop group 1 (root and tuber vegetables), crop group 3 (bulb vegetables, bulbs), crop group 8 (fruiting vegetables), crop group 9 (cucurbit vegetables), crop group 10 (citrus), crop group 11 (pome fruits), crop group 12 (stone fruits), crop group 13 (berries), crop group 14 (tree nuts), crop group 16 (forage, fodder, and straw of cereal grains), crop group 17 (grass forage, fodder, and hay), crop group 18 (non-grass animal feeds), crop group 21 (edible fungi), crop group 23 (tropical and subtropical fruits, medium and large, smooth inedible peel). *Contact:* AD.

2. *EPA Registration Number:* 84846–14. *Docket ID number:* EPA–HQ–OPP–2021–0630. *Applicant:* FBSciences, Inc., 153 N Main St. Ste 100, Collierville, TN 38017. *Active ingredient:* Complex Polymeric Polyhydroxy Acids (CPPA). *Product type:* Fungicide and Insecticide. *Proposed use:* In or on all food commodities. *Contact:* BPPD.

Authority: 7 U.S.C. 136 *et seq.*

Dated: November 15, 2021.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Program Support.

[FR Doc. 2021–25604 Filed 11–23–21; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

Sunshine Act Meetings; Notice of Open Meeting of the Advisory Committee of the Export-Import Bank of the United States (EXIM)

TIME AND DATE: Thursday, December 9th, 2021 from 2:00–4:30 p.m. EDT.

PLACE: The meeting will be held virtually.

STATUS: Public Participation: The meeting will be open to public participation and time will be allotted for questions or comments submitted online. Members of the public may also file written statements before or after the meeting to *external@exim.gov.* Interested parties may register below for the meeting: *https://teams.microsoft.com/registration/PAFTuZHHMk2Zb1GDkIVFJw,5M1LfonJMEi2VFUgYRv6oQ,i145n2l9vkmDj5btNlkuGw,6pffizIY90ejfY7ZxOQxYA,rpZ5FoIsIUSTq6hUxDUGrQ,ALPUR1YOwUOm02kL5pavxw?mode=read&tenantId=b953013c-c791-4d32-996f-518390854527.*

MATTERS TO BE CONSIDERED: Discussion of EXIM policies and programs to provide competitive financing to expand United States exports and comments for inclusion in EXIM's Report to the U.S. Congress on Global Export Credit Competition.

CONTACT PERSON FOR MORE INFORMATION: For further information, contact India Walker, External Enagagement Specialist, at 202–480–0062 or at *india.walker@exim.gov.*

Joyce B. Stone,

Assistant Corporate Secretary.

[FR Doc. 2021–25789 Filed 11–22–21; 11:15 am]

BILLING CODE 6690–01–P

FEDERAL TRADE COMMISSION

Privacy Act of 1974; System of Records

AGENCY: Federal Trade Commission (FTC).

ACTION: Notice of modified system of records.

SUMMARY: The FTC is making technical revisions to one of the notices that it has published under the Privacy Act of 1974. This action is intended to make the notice clearer, more accurate, and up-to-date.

DATES: This notice shall become final and applicable on November 24, 2021.

FOR FURTHER INFORMATION CONTACT: G. Richard Gold, Attorney, Office of the General Counsel, FTC, 600 Pennsylvania Avenue NW, Washington, DC 20580, (202) 326–3355.

SUPPLEMENTARY INFORMATION: To inform the public, the FTC publishes in the **Federal Register** and posts on its website a ''system of records notice'' (SORN) for each system of records that the FTC currently maintains within the meaning of the Privacy Act of 1974, as amended, 5 U.S.C. 552a (Privacy Act or Act). See *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems.* The Privacy Act protects records about individuals in systems of records collected and maintained by Federal agencies.[1] Each Federal agency, including the FTC, must publish a SORN that describes the records maintained in each of its Privacy Act systems, including the categories of individuals that the records in the system are about, where and how the agency maintains these records, and how individuals can find out whether an agency system contains any records about them or request access to their records, if any. The FTC, for example, maintains 40 systems of records under the Act. Some of these systems contain records about the FTC's own employees, such as personnel and payroll files. Other FTC systems contain records about members of the public, such as public comments, consumer complaints, or phone numbers submitted to the FTC's Do Not Call Registry.

For this notice, the FTC is revising FTC–II–1 (General Personnel Records—FTC) to ensure that the SORN remains clear, accurate, and up-to-date. This SORN covers Official Personnel Folders (OPFs) and the approved electronic equivalent (the electronic OPF or eOPF) and other personnel records that the FTC's Human Capital Management Office (HCMO) maintains about FTC employees. The Office of Personnel Management (OPM) has published a Government-wide SORN that covers this system of records, OPM/GOVT–1 (General Personnel Records). See 71 FR 35341, 35342 (2006). The Commission has updated or clarified the sections on authority, purpose, retention of records, and procedures for employees and

[1] A system is not a ''system of records'' under the Act unless the agency maintains and retrieves records in the system by the relevant individual's name or other personally assigned identifier.

former employees on record access, contesting records and notification.

The FTC is not substantively adding or amending any routine uses of its Privacy Act system records. Accordingly, the FTC is not required to provide prior public comment or notice to OMB or Congress for these technical amendments, which are final upon publication. See U.S.C. 552a(e)(11) and 552a(r); OMB Circular A–108, supra.

FTC Systems of Records Notices

In light of the updated SORN template set forth in the revised OMB Circular A–108 (2016), the FTC is reprinting the entire text of the amended SORN to read as follows:

* * * * *

II. Commission Personnel Systems of Records

SYSTEM NAME AND NUMBER:

General Personnel Records—FTC (FTC–II–1).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. For other locations where records may be maintained or accessed, see Appendix III (Locations of FTC Buildings and Regional Offices), available on the FTC's website at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 80 FR 9460, 9465 (Feb. 23, 2015).

SYSTEM MANAGER(S):

Chief Human Capital Officer, Human Capital Management Office, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580, email: *SORNs@ftc.gov.* See OPM/GOVT–1 for information about the system manager and address for that system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 1302, 2951, 3301, 3372, 4118, 8347; the Rehabilitation Act of 1973, 29 U.S.C. 791; Executive Orders 9397, 9830, 12107 and 13164; and 5 CFR pt. 293.

PURPOSE(S) OF THE SYSTEM:

The Official Personnel Folder (OPF), its approved electronic equivalent (the electronic OPF or eOPF), and other general personnel records are the official repository of the records, reports of personnel actions, and the documents required in connection with those actions effected during an employee's Federal service. The personnel action reports and other documents, some of which are filed as long term records in the OPF, give legal force and effect to personnel transactions and establish employee rights and benefits under pertinent laws and regulations governing Federal employment. The OPF, which exists in various approved media, is maintained for the period of the employee's service in the Commission and is then transferred to the National Personnel Records Center for storage or, as appropriate, to the next employing Federal agency. Other records are either retained at the agency for various lengths of time in accordance with National Archives and Records Administration records schedules or destroyed when they have served their purpose or when the employee leaves the agency. They provide the basic source of factual data about a person's Federal employment while in the service and after his or her separation. Records in this system have various uses including: Screening qualifications of employees; determining status, eligibility, and employees' rights and benefits under pertinent laws and regulations governing Federal employment, including requests for reasonable accommodation by applicants with disabilities or sincerely held religious beliefs, practices, or observances; computing length of service; and for other information needed in providing personnel services. These records and their automated or microformed equivalents may also be used to locate individuals for personnel research. Temporary documents on the left side of the OPF may lead (or have led) to a formal action, but do not constitute a record of it, nor make a substantial contribution to the employee's long term record.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current Federal Trade Commission employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Each category of records may include identifying information such as name(s), date of birth, home residence, mailing address, Social Security number, and home telephone number. This system includes, but is not limited to, the contents of the Official Personnel Folder (OPF) maintained by the FTC's Human Capital Management Office (HCMO) and described in the United States Office of Personnel Management (OPM) Guide to Personnel Recordkeeping and in OPM's Government-wide system of records notice for this system, OPM/GOVT–1. (Nonduplicative personnel records maintained by FTC employee managers in other FTC offices are covered by FTC–II–2, Unofficial Personnel Records–FTC.) Records in this system (FTC–II–1) include copies of current employees' applications for employment, documentation supporting appointments and awards, benefits records (health insurance, life insurance, retirement information, and Thrift Savings Plan information), investigative process documents, personnel actions, other personnel documents, changes in filing requirements, and training documents.

Other records include:

a. Records reflecting work experience, educational level achieved, specialized education or training obtained outside of Federal service.

b. Records reflecting Federal service and documenting work experience and specialized education or training received while employed. Such records contain information about past and present positions held; grades; salaries; and duty station locations; commendations, awards, or other data reflecting special recognition of an employee's performance; and notices of all personnel actions, such as appointments, transfers, reassignments, details, promotions, demotions, reductions in force, resignations, separations, suspensions, approval of disability retirement applications, retirement and removals.

c. Records relating to participation in the Federal Employees' Group Life Insurance Program and Federal Employees Health Benefits Program.

d. Records relating to an Intergovernmental Personnel Act assignment or Federal-private exchange program.

e. Records relating to participation in an agency Federal Executive or SES Candidate Development Program.

f. Records relating to Government-sponsored training or participation in the agency's Upward Mobility Program or other personnel programs designed to broaden an employee's work experiences and for purposes of advancement (*e.g.,* an administrative intern program).

g. Records connected with the Senior Executive Service (SES), for use in making studies and analyses of the SES, preparing reports, and in making decisions affecting incumbents of these positions, *e.g.,* relating to sabbatical leave programs, training, reassignments, and details, that are perhaps unique to the SES and which may or may not be filed in the employee's OPF. These records may also serve as basis for reports submitted to OMB's Executive Personnel and Management Development Group for purposes of

implementing the Office's oversight responsibilities concerning the SES.

h. Records on an employee's activities on behalf of the recognized labor organization representing agency employees, including accounting of official time spent and documentation in support of per diem and travel expenses.

i. To the extent that the records listed here are also maintained in the agency automated personnel or microform records system, those versions of the above records are considered to be covered by this system notice. Any additional copies of these records (excluding performance ratings of record and conduct-related documents maintained by first-line supervisors and managers covered by FTC–II–2) maintained by agencies at field or administrative offices remote from where the original records exist are considered part of this system.

j. Records relating to designations for lump sum death benefits.

k. Records relating to classified information nondisclosure agreements.

l. Records relating to the Thrift Savings Plan (TSP) concerning the starting, changing, or stopping of contributions to the TSP as well as the how the individual wants the investments to be made in the various TSP Funds.

m. Copies of records contained in the Enterprise Human Resources Integration (EHRI) data warehouse (including the Central Employee Record, the Business Intelligence file that provide resources to obtain career summaries, and the electronic Official Personnel Folder (eOPF)) maintained by OPM. These data elements include many of the above records along with additional human resources information such as training, payroll and performance information from other OPM and agency systems of records. A definitive list of EHRI data elements is contained in OPM's Guide to Human Resources Reporting and The Guide to Personnel Data Standards.

n. Emergency contact information for the employee (see, *e.g.,* FTC Form 75), which is kept on the left side of the OPF.

RECORD SOURCE CATEGORIES:

Individual to whom the record applies and agency employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Performance Related Uses

(a) To disclose information to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested), where necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit;

(b) To disclose to an agency in the executive, legislative, or judicial branch, or the District of Columbia Government in response to its request, or at the initiation of the agency maintaining the records, information in connection with the hiring of an employee; the issuance of a security clearance; the conducting of a security or suitability investigation of an individual; the classifying of jobs; the letting of a contract; the issuance of a license, grant, or other benefit by the requesting agency; or the lawful statutory, administrative, or investigative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's decision on the matter;

(c) By the agency or by OPM to locate individuals for personnel research or survey response, and in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference;

(d) To provide an official of another Federal agency information needed in the performance of official duties related to reconciling or reconstructing data files, in support of the functions for which the records were collected and maintained;

(e) To disclose information to officials of the Merit Systems Protection Board, including the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of Office rules and regulations, investigations of alleged or prohibited personnel practices, and such other functions, promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law;

(f) To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission by the President's Reorganization Plan No. 1 of 1978;

(g) To disclose to prospective non-Federal employers, the following information about a specifically identified current or former Federal employee:

(i) Tenure of employment;

(ii) Civil service status;

(iii) Length of service in the agency and the Government; and

(iv) When separated, the date and nature of action as shown on the Notification of Personnel Action, Standard Form 50 (or authorized exception);

(h) To consider employees for recognition through quality step increases, and to publicize those granted. This may include disclosure to other public and private organizations, including news media, which grant or publicize employee recognition;

(i) To consider and select employees for incentive awards and other honors and to publicize those granted. This may include disclosure to other public and private organizations, including news media, which grant or publicize employee awards or honors;

(j) To disclose information to any member of the agency's Performance Review Board or other board or panel (*e.g.,* one convened to select or review nominees for awards of merit pay increases), when the member is not an official of the employing agency; information would then be used for the purposes of approving or recommending selection of candidates for executive development of SES candidate programs, issuing a performance appraisal rating, issuing performance awards, nominating for Meritorious and Distinguished Executive ranks, and removal, reduction-in-grade, and other personnel actions based on performance;

(k) By agency officials for purposes of review in connection with appointments, transfers, promotions, reassignments, adverse actions, disciplinary actions, and determinations of the qualifications of an individual;

(l) By the Office of Personnel Management for purposes of making a decision when a Federal employee or former Federal employee is questioning the validity of a specific document in an individual's record; and

(m) As a data source for management information for promotion of summary descriptive statistics and analytical studies in support of the related

personnel management functions of human resource studies; may also be utilized to locate specific individuals for personnel research or other personnel management functions;

(2) Training/Education Related Uses

(a) To disclose information to Government training facilities (Federal, State, and local) and to non-Government training facilities (private vendors of training courses or programs, private schools, etc.) for training purposes; and

(b) To disclose information to educational institutions on appointment of a recent graduate to a position in the Federal service, and to provide college and university officials with information about their students working under the Cooperative Education Volunteer Service, or other similar programs where necessary to a student's obtaining credit for the experience gained;

(3) Retirement/Insurance/Health Benefits Related Uses

(a) To disclose information to: The Department of Labor, Department of Veterans Affairs, Social Security Administration, Department of Defense, Federal agencies that have special civilian employee retirement programs; or a national, State, county, municipal, or other publicly recognized charitable or income security administration agency (*e.g.,* State unemployment compensation agencies) where necessary to adjudicate a claim under the retirement, insurance or health benefits programs of the Office of Personnel Management or an agency cited above, or to an agency to conduct an analytical study or audit of benefits being paid under such programs;

(b) To disclose to the Office of Federal Employees Group Life Insurance information necessary to verify election, declination, or waiver of regular and/or optional life insurance coverage or eligibility for payment of a claim for life insurance;

(c) To disclose to health insurance carriers contracting with the Office of Personnel Management to provide a health benefits plan under the Federal Employees Health Benefits Program, information necessary to identify enrollment in a plan, to verify eligibility for payment of a claim for health benefits, or to carry out the coordination or audit of benefit provisions of such contracts;

(d) When an individual to whom a record pertains is mentally incompetent or under other legal disability, information in the individual's record may be disclosed to any person who is responsible for the care of the individual, to the extent necessary to assure payment of benefits to which the individual is entitled;

(e) To disclose to the agency-appointed representative of an employee all notices, determinations, decisions, or other written communications issued to the employee, in connection with an examination ordered by the agency under:

(i) Fitness-for-duty examination procedures; or

(ii) Agency-filed disability retirement procedures;

(f) To disclose to a requesting agency, organization, or individual the home address and other relevant information concerning those individuals who, it is reasonably believed, might have contracted an illness, been exposed to, or suffered from a health hazard while employed in the Federal work force; and

(g) To disclose information to the Department of Defense, National Oceanic and Atmospheric Administration, and the United States Coast Guard needed to effect any adjustments in retired or retained pay required by the dual compensation provisions of 5 U.S.C. 5532;

(4) Labor Relations Related Uses

(a) To disclose information to the Federal Labor Relations Authority (including its General Counsel) when requested in connection with investigation and resolution of allegations of unfair labor practices, in connection with the resolution of exceptions to arbitrator's awards where a question of material fact is raised and matters before the Federal Service Impasses Panel; and

(b) To disclose information to officials of labor organizations recognized under 5 U.S.C. 71 *et seq.* when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions; and

(5) Miscellaneous Uses

(a) To provide data to OPM for inclusion in the automated Center Personnel Data File;

(b) To be disclosed for any other routine use set forth in the Government-wide system of records notice published for this system by OPM, see OPM/GOVT–1, or any successor OPM system notice that may be published for this system (visit *www.opm.gov* for more information);

(c) To disclose information to a Federal, state, or local agency for determination of an individual's entitlement to benefits in connection with Federal Housing Administration programs; and

(d) To locate individuals for personnel research or survey response, and in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances, the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

For other ways that the Privacy Act permits the FTC to use or disclose system records outside the agency, see Appendix I (Authorized Disclosures and Routine Uses Applicable to All FTC Privacy Act Systems of Records), available on the FTC's website at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 83 FR 55541, 55542–55543 (Nov. 6, 2018).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records may be maintained on standard legal-size and letter-size paper, and in electronic storage media such as personnel system databases and .pdf forms.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are indexed by employee name and social security number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The OPF is maintained for the period of the employee's service in the agency and is then, if in a paper format, transferred to the National Personnel Records Center for storage or, as appropriate, to the next employing Federal agency. If the OPF is maintained in an electronic format, the transfer and storage is in accordance with the OPM-approved electronic system according to the most current version of OPM's Guide to Personnel Recordkeeping. Destruction of the OPF is in accordance with General Records Schedule GRS–2.2, Items 40–41.

When the individual transfers to any Federal agency or to another appointing office, the OPF is sent to that agency or office. All personnel-related medical records, except for those relating to reasonable accommodation requests, are covered by a separate OPM Privacy Act system of records notice, OPM/GOVT–10.

Other records. These records are retained for varying periods of time as set out by GRS 2.2.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Access is restricted to agency personnel or contractors whose responsibilities require access. Paper records are maintained in lockable rooms or file cabinets. (In addition, FTC HCMO offices are in a locked suite separate from other FTC offices not generally accessible to the public or other FTC staff.) Access to electronic records is controlled by ''user ID'' and password combinations and/or other appropriate electronic access or network controls (*e.g.,* firewalls). FTC buildings are guarded and monitored by security personnel, cameras, ID checks, and other physical security measures.

RECORD ACCESS PROCEDURES:

See § 4.13 of the FTC's Rules of Practice, 16 CFR 4.13. For additional guidance, see also Appendix II (How To Make A Privacy Act Request), available on the FTC's website at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 73 FR 33592, 33634 (June 12, 2008). Current FTC employees may also access their records directly by utilizing OPM's approved electronic Official Personnel Folder system, using their assigned user ID and password.

Former FTC employees subsequently employed by another Federal agency should contact the personnel office for their current Federal employer. Former employees who have left Federal service and want access to their official personnel records in storage should contact the National Personnel Records Center, 1411 Boulder Boulevard, Valmeyer, IL 62295.

CONTESTING RECORD PROCEDURES:

See § 4.13 of the FTC's Rules of Practice, 16 CFR 4.13. For additional guidance, see also Appendix II (How To Make A Privacy Act Request), available on the FTC's website at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 73 FR 33592, 33634 (June 12, 2008). Current FTC employees may also access their records directly by utilizing OPM's approved electronic Official Personnel Folder system, using their assigned user ID and password.

Former FTC employees subsequently employed by another Federal agency should contact the personnel office for their current Federal employer. Former employees who have left Federal service and want access to their official personnel records in storage should contact the National Personnel Records Center, 1411 Boulder Boulevard, Valmeyer, IL 62295.

NOTIFICATION PROCEDURES:

See § 4.13 of the FTC's Rules of Practice, 16 CFR 4.13. For additional guidance, see also Appendix II (How To Make A Privacy Act Request), available on the FTC's website at *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems* and at 73 FR 33592, 33634 (June 12, 2008). Current FTC employees may also access their records directly by utilizing OPM's approved electronic Official Personnel Folder system, using their assigned user ID and password.

Former FTC employees subsequently employed by another Federal agency should contact the personnel office for their current Federal employer. Former employees who have left Federal service and want access to their official personnel records in storage should contact the National Personnel Records Center, 1411 Boulder Boulevard, Valmeyer, IL 62295.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

84 FR 16493–16510 (April 19, 2019)
80 FR 9460–9465 (February 23, 2015)
74 FR 17863–17866 (April 17, 2009)
73 FR 33591–33634 (June 12, 2008).

Josephine Liu,

Assistant General Counsel for Legal Counsel.

[FR Doc. 2021–25637 Filed 11–23–21; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–1721]

Agency Information Collection Activities; Proposed Collection; Comment Request; Investigational New Drug Application Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection associated with investigational new drug application requirements.

DATES: Submit either electronic or written comments on the collection of information by January 24, 2022.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before January 24, 2022. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of January 24, 2022. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2014–N–1721 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Investigational New Drug Applications.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Investigational New Drug Applications—21 CFR Part 312

OMB Control Number 0910–0014—Revision

This information collection supports implementation of provisions of section 505 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355) and of the licensing provisions of the Public Health Service Act (42 U.S.C. 201 *et seq.*) that govern investigational new drugs and investigational new drug applications (INDs). Implementing regulations are found in part 312 (21 CFR part 312), and provide for the issuance of guidance documents (see § 312.145 (21 CFR 312.145)) to assist persons in complying with the applicable requirements. The information collection applies to all clinical investigations subject to section 505 of the FD&C Act and include the following types of INDs:

• An Investigator IND is submitted by a physician who both initiates and investigates, and under whose immediate direction the investigational drug is administered or dispensed. A physician might submit a research IND to propose studying an unapproved drug or an approved product for a new indication or in a new patient population.

• Emergency Use IND allows FDA to authorize use of an experimental drug in an emergency situation that does not allow time for submission of an IND in accordance with § 312.23 or § 312.20 (21 CFR 312.23 or 312.20). It is also used for patients who do not meet the criteria of an existing study protocol or if an approved study protocol does not exist.

• Treatment IND is submitted for experimental drugs showing promise in clinical testing for serious or immediately life-threatening conditions while the final clinical work is conducted and FDA's review takes place.

There are two IND categories: Commercial and research (non-commercial).

General IND requirements include submitting an initial application as well as amendments to that application; submitting reports on significant revisions of clinical investigation plans; submitting information to the clinical trials data bank (*https://clinicaltrials.gov*) established by the National Institutes of Health/National Library of Medicine, including expanded information on certain clinical trials and information on the results of these clinical trials; and reporting information on a drug's safety or effectiveness. In addition, sponsors are required to provide to FDA an annual summary of the previous year's clinical experience. The regulations also include recordkeeping requirements regarding the disposition of drugs, records regarding individual case histories, and certain other documentation verifying clinical investigators' fulfillment of responsibilities.

Form FDA 1571 entitled ''Investigational New Drug Application (IND)'' and Form FDA 1572 entitled ''Statement of Investigator,'' were developed to assist respondents with the information collection and provide for uniform reporting of required data elements. The information is required to be submitted electronically. Individuals who are interested in receiving printed forms may send an email request to the FDA Forms Manager at

formsmanager@OC.FDA.GOV. Fees may apply. Sponsors (including sponsor-investigators) interested in filing or updating a research IND may use a new web-based interface developed for use by mobile device or desktop to help in completing Form FDA 1571. The web-based interface also allows respondents to electronically submit completed Form FDA 1571 and associated files. For more information regarding Forms FDA 1571 and 1572 visit *https://www.fda.gov/news-events/expanded-access/how-complete-form-fda-1571-and-form-fda-1572.*

Human drug, biological product, and device product submissions must be accompanied by Form FDA 3674, ''Certification To Accompany Drug, Biological Product, and Device Applications or Submissions.'' The guidance document ''Form FDA 3674—Certifications To Accompany Drug, Biological Product, and Device Application'' (November 2017) is available from our website at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/form-fda-3674-certifications-accompany-drug-biological-product-and-device-applicationssubmissions* and provides instruction on completing and submitting this information to FDA. As communicated in the instructions, the certification must accompany the application or submission and be included at the time of submission to FDA.

Regulations in part 312, subpart B, specify content and format requirements for applications, amendments, annual reporting, and withdrawals, including content and format requirements for protocol and information amendments. The regulations also explain phases of an investigation and set forth principles of IND submissions.

Regulations in part 312, subpart C, describe administrative actions pertaining to respondents' requests for and responses to clinical holds, terminations, and inactive IND status determinations, as well as various types of meetings (for example, End-of-Phase 2 and Pre-new drug application (NDA) meetings).

Regulations in part 312, subpart D, set forth sponsor and investigator responsibilities, including general responsibilities; transfer of obligations to a contract research organization; recordkeeping and record retention controls; reporting responsibilities; and responsibility for disposition of unused supply of investigational drug. The regulations also provide for investigator controls including review of ongoing investigations; compliance with requirements regarding the protection of human subjects and institutional review board assurance; and disqualification of clinical investigators.

Regulations in part 312, subpart E, sets forth requirements applicable to drugs intended to treat life-threatening and severely debilitating illnesses. The regulations establish procedures to reflect that physicians and patients accept greater risk or side effects from products that treat life-threatening and severely debilitating illnesses than they would accept from products that treat less serious illnesses. The procedures also reflect the recognition that the benefits of the drug need to be evaluated in light of the severity of the disease being treated.

Regulations in part 312, subpart F, include provisions pertaining to import and export requirements; foreign clinical studies not conducted under an IND; the disclosure of data and information in an IND; and the issuance of guidance documents. We are revising the information collection to account for burden that may be associated with recommendations found in Agency guidance documents.

- The guidance document entitled ''Oversight of Clinical Investigations'' (August 2013) communicates risk-based monitoring strategies and recommends plans for investigational studies of medical products, including human drug and biological products, medical devices, and combinations thereof. The guidance document is intended to enhance human subject protection and the quality of clinical trial data by focusing sponsor oversight on the most important aspects of study conduct and reporting. The guidance also communicates that sponsors can use a variety of approaches to fulfill responsibilities for monitoring clinical investigator conduct and performance in IND studies, and provides a description of strategies for monitoring activities to reflect a modern, risk-based approach.
- The guidance document entitled ''Pharmacogenomic Data Submissions'' (March 2005) provides recommendations intended to assist sponsors submitting or holding INDs, NDAs, or biologics license applications (BLAs) with submission requirements for relevant data regarding drug safety and effectiveness (including §§ 312.22, 312.23, 312.31, 312.33, 314.50, 314.81, 601.2, and 601.12 (21 CFR 312.22, 312.23, 312.31, 312.33, 314.50, 314.81, 601.2 and 601.12)). Because the regulations were developed before the advent of widespread animal or human genetic or gene expression testing, the regulations do not specifically address when such data must be submitted. The guidance document includes content and format recommendations regarding pharmacogenomic data submissions. Although we have not received any pharmacogenomic submissions since 2013, we assume an average of 50 hours for preparing and providing information to FDA as recommended in the guidance and estimate one submission annually.
- The guidance document entitled ''Adaptive Designs for Clinical Trials of Drugs and Biologics'' (December 2019) was developed to assist sponsors and applicants submitting INDs, NDAs, BLAs, or supplemental applications on the appropriate use of adaptive designs for clinical trials to provide evidence of the effectiveness and safety of a drug or biologic. The guidance document describes important principles for designing, conducting, and reporting the results from an adaptive clinical trial, and advises sponsors on the types of information to submit to facilitate FDA evaluation of clinical trials with adaptive designs, including Bayesian adaptive and complex trials that rely on computer simulations for their design.

The referenced guidance documents are available for download from our website at *https://www.fda.gov/regulatory-information/search-fda-guidance-document* and were issued consistent with § 312.145 to help respondents comply with requirements in part 312. In publishing the respective notices of availability for each guidance document, we included an analysis under the PRA and invited public comment on the associated information collection recommendations. In addition, all Agency guidance documents are issued in accordance with our Good Guidance Practice regulations in 21 CFR 10.115, which provide for public comment at any time.

Regulations in part 312, subpart G, provide for drugs for investigational use in laboratory research animals or in vitro tests.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN FOR BIOLOGICS [1]

21 CFR section; information collection activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Subpart A—General Provisions: §§ 312.1 through 312.10					
§ 312.2(e); requests for FDA advice on the applicability of part 312 to a planned clinical investigation	454	1.528	694	24	16,656
§ 312.8; requests to charge for an investigational drug	14	1.64	23	48	1,104
§ 312.10; waiver requests	5	1	5	24	120
Subtotal Subpart A Center for Biologics Evaluation and Research (CBER)			722		17,880
Subpart B—Investigational New Drug Application (IND): §§ 312.20 through 312.38 (Including Forms FDA 1571, 1572, and 3674)					
§ 312.23(a) through (f); IND content and format	2,075	3.382	7,018	300	2,105,400
§ 312.30(a) through (e); Protocol amendments	1,781	4.6692	8,316	284	2,361,744
§ 312.31(b); information amendments	169	2.48	419	100	41,900
§ 312.32(c) and (d); IND Safety reports	224	10.59	2,372	32	75,904
§ 312.33(a) through (f); IND Annual reports	971	2.2739	2,208	360	794,880
§ 312.38(b) and (c); notifications of withdrawal of an IND	712	3.057	2,177	28	60,956
Subtotal Subpart B CBER			22,510		5,440,784
Subpart C—Administrative Actions: §§ 312.40 through 312.48					
§ 312.42; clinical holds and requests for modification	154	1.65	254	284	72,136
§ 312.44(c) and (d); sponsor responses to FDA when IND is terminated	86	1.22	105	16	1,680
§ 312.45(a) and (b); sponsor requests for or responses to an inactive status determination of an IND by FDA	48	1.48	71	12	852
§ 312.47; meetings, including ''End-of-Phase 2'' meetings and ''Pre-NDA'' meetings	157	1.80	283	160	45,280
Subtotal Subpart C CBER			713		119,948
Subpart D—Responsibilities of Sponsors and Investigators: §§ 312.50 through 312.70					
§ 312.53(c); investigator reports submitted to the sponsor, including Form FDA–1572, curriculum vitae, clinical protocol, and financial disclosure	1,068	5.23	5,586	80	446,880
§ 312.54(a); sponsor submissions to FDA concerning investigations involving an exception from informed consent under § 50.24	4	4.25	17	48	816
§ 312.54(b); sponsor notifications to FDA and others concerning an institutional review board determination that it cannot approve research because it does not meet the criteria in the exception from informed consent in § 50.24(a)	1	1	1	48	48
§ 312.55(a); number of investigator brochures submitted by the sponsor to each investigator	473	2.224	1,052	48	50,496
§ 312.55(b); number of sponsor reports to investigators on new observations, especially adverse reactions and safe use	243	4.95	1,203	48	57,744
§ 312.56(b), (c), and (d); review of ongoing investigations and associated notifications; sponsor notifications	915	2.948	2,698	80	215,840
§ 312.58; inspection of records and reports by FDA	7	1	7	8	56
§ 312.64; number of investigator reports to the sponsor, including progress reports, safety reports, final reports, and financial disclosure reports	2,728	3.816	10,411	24	249,864
§ 312.70; disqualification of a clinical investigator by FDA	5	1	5	40	200
Subtotal Subpart D CBER			20,980		1,021,944
Subpart F—Miscellaneous: §§ 312.110 through 312.145					
§ 312.110(b)(4) and (b)(5); number of written certifications and written statements submitted to FDA relating to the export of an investigational drug	18	1	18	75	1,350
§ 312.120(b); number of submissions to FDA of ''supporting information'' related to the use of foreign clinical studies not conducted under an IND	280	9.82	2,750	32	88,000
§ 312.120(c); number of waiver requests submitted to FDA related to the use of foreign clinical studies not conducted under an IND	7	2.29	16	24	384
§ 312.130; number of requests for disclosable information in an IND and for investigations involving an exception from informed consent under § 50.24	350	1.342	470	8	3,760
Subtotal Subpart F CBER			3,254		93,494
Total			48,179		6,694,050

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN FOR BIOLOGICS [1]

21 CFR section; information collection activity	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Subpart D—Responsibilities of Sponsors and Investigators: §§ 312.50 Through 312.70					
§ 312.52(a); sponsor records for the transfer of obligations to a contract research organization.	94	2.26	212	2	424

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN FOR BIOLOGICS [1]—Continued

21 CFR section; information collection activity	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
§ 312.57; sponsor recordkeeping showing the receipt, shipment, or other disposition of the investigational drug, and any financial interest.	335	2.70	904	100	90,400
§ 312.62(a); investigator recordkeeping of the disposition of drugs	453	1	453	40	18,120
§ 312.62(b); investigator recordkeeping of case histories of individuals	453	1	453	40	18,120
Subtotal Subpart D CBER			2,022		127,064
Subpart G—Drugs for Investigational Use in Laboratory Research Animals or In Vitro Tests					
§ 312.160(a)(3); records pertaining to the shipment of drugs for investigational use in laboratory research animals or in vitro tests.	111	1.40	155	0.5 (30 minutes)	78
§ 312.160(c) shipper records of alternative disposition of unused drugs.	111	1.40	155	0.5 (30 minutes)	78
Subtotal Subpart G CBER			310		156
Total			2,332		127,220

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 3—ESTIMATED ANNUAL REPORTING BURDEN FOR HUMAN DRUGS [1]

21 CFR section; information collection activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Subpart A—General Provisions					
§ 312.2(e); requests for FDA advice on the applicability of part 312 to a planned clinical investigation	419	1	419	24	10,056
§ 312.8; requests to charge for an investigational drug	25	1.28	32	48	1,536
§ 312.10; requests to waive a requirement in part 312	68	1.5	102	24	2,448
Subtotal Subpart A Center for Drug Evaluation and Research (CDER)			553		14,040
Subpart B—Investigational New Drug Application (IND)					
§ 312.23(a) through (f); IND content and format (including Forms FDA 1571 and 3674)	4,886	1.4662	7,164	300	2,149,200
§ 312.30(a) through (e); protocol amendments	11,847	3.2367	38,346	284.25	10,899,850
§ 312.31(b); Information amendments	8,094	3.30899	26,783	100	2,678,300
§ 312.32(c) and (d); IND safety reports	892	15.848	14,137	32	452,384
§ 312.33(a) through (f); IND annual reports	3,777	2.9097	10,990	360	3,956,400
§ 312.38(b) and (c); notifications of withdrawal of an IND	1,549	1.834	2,841	28	79,548
Subtotal Subpart B CDER			100,261		20,215,682
Subpart C—Administrative Actions: §§ 312.40 through 312.48					
§ 312.42; clinical holds and requests for modifications	181	1.28	232	284	65,888
§ 312.44(c) and (d); sponsor responses to FDA when IND is terminated	1	1	1	16	16
§ 312.45(a) and (b); sponsor requests for or responses to an inactive status determination of an IND by FDA	213	1.72	367	12	4,404
§ 312.47; meetings, including "End-of-Phase 2" meetings and "Pre-NDA" meetings	174	2.885	502	160	80,320
Subtotal Subpart C CDER			1,102		150,628
Subpart D—Responsibilities of Sponsors and Investigators					
§ 312.54(a); sponsor submissions to FDA concerning investigations involving an exception from informed consent under § 50.24	7	1.14	8	48	384
§ 312.54(b); sponsor notifications to FDA and others concerning an institutional review board determination that it cannot approve research because it does not meet the criteria in the exception from informed consent in § 50.24(a)	2	1	2	48	96
§ 312.56; review of ongoing investigations and associated notifications	4,570	5.4689	24,993	80	1,999,440
§ 312.58; inspection of records and reports by FDA	73	1	73	8	584
§ 312.70; disqualification of a clinical investigator by FDA	5	1	5	40	200
Subtotal Subpart D CDER			25,081		2,000,704
Subpart F—Miscellaneous: §§ 312.110 through 312.145					
§ 312.110(b)(4) and (b)(5); written certifications and written statements submitted to FDA relating to the export of an investigational drug	8	22.375	179	75	13,425
§ 312.120(b); submissions to FDA of "supporting information" related to the use of foreign clinical studies not conducted under an IND	1,964	7.352	14,440	32	462,080
§ 312.120(c); waiver requests submitted to FDA related to the use of foreign clinical studies not conducted under an IND	68	1.5	102	24	2,448

TABLE 3—ESTIMATED ANNUAL REPORTING BURDEN FOR HUMAN DRUGS [1]—Continued

21 CFR section; information collection activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
§ 312.130; requests for disclosable information in an IND and for investigations involving an exception from informed consent under § 50.24	3	1	3	8	24
§ 312.145; Guidance Documents:					
Oversight of Clinical Investigations (2013)	88	1.5	132	4	528
Pharmacogenomic Data Submissions (2005)	1	1	1	50	50
Adaptive Designs for Clinical Trials of Drugs and Biologics (2019)	55	4.727	260	50	13,000
Subtotal Subpart F CDER			15,117		491,555
Total			142,114		22,872,609

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 4—ESTIMATED ANNUAL RECORDKEEPING BURDEN FOR HUMAN DRUGS [1]

21 CFR section; information collection activity	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Subpart D—Responsibilities of Sponsors and Investigators					
§ 312.52(a); transfer of obligations to a contract research organization	466	3.107	1,448	300	434,400
§ 312.57; records showing the receipt, shipment, or other disposition of the investigational drug and any financial interests.	13,000	1	13,000	100	1,300,000
§ 312.62(a); records on disposition of drugs	13,000	1	13,000	40	520,000
§ 312.62(b); records on case histories of individuals	2,192	6.587	14,439	40	577,560
Subtotal Subpart D CDER			41,887		2,831,960
Subpart G—Drugs for Investigational Use in Laboratory Research Animals or In Vitro Tests					
§ 312.160(a)(3); records pertaining to the shipment of drugs for investigational use in laboratory research animals or in vitro tests.	547	1.43	782	0.50 (30 minutes)	391
§ 312.160(c); shipper records of alternative disposition of unused drugs.	547	1.43	782	0.50 (30 minutes)	391
Subtotal			1,564		782
Total			43,451		2,832,742

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The information collection reflects program changes and adjustments. We have revised the information collection to account for burden that may be incurred by respondents who choose to adopt or implement recommendations discussed in referenced Agency guidance documents intended to assist respondents in complying with regulatory requirements in part 312. We have also made adjustments to individual collection elements. As a result of these changes and adjustments, the information collection reflects an overall decrease in both annual responses and burden hours. Finally, we have removed burden we attribute to provisions in part 312, subpart I: Expanded Access to Investigational Drugs for Treatment Use and are revising OMB control number 0910–0814 to include burden associated with information collection applicable to these regulatory provisions for efficiency of Agency operations.

Dated: November 17, 2021.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2021–25615 Filed 11–23–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–E–2122]

Determination of Regulatory Review Period for Purposes of Patent Extension; TRODELVY

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for TRODELVY and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human biological product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by January 24, 2022. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by May 23, 2022. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before January 24, 2022. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of January 24, 2022. Comments received by mail/hand delivery/courier (for written/paper

submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2020–E–2122 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; TRODELVY.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biologic product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human biologic product TRODELVY (sacituzumab govitecan-hziy). TRODELVY is indicated for the treatment of adult patients with metastatic triple-negative breast cancer who have received at least two prior therapies for metastatic disease. This indication is approved under accelerated approval based on tumor response rate and duration of response. Continued approval for this indication may be contingent upon verification and description of clinical benefit in confirmatory trials. Subsequent to this approval, the USPTO received a patent term restoration application for TRODELVY (U.S. Patent No. 7,999,083) from Immunomedics, Inc., and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated January 4, 2021, FDA advised the USPTO that this human biological product had undergone a regulatory review period and that the approval of TRODELVY represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for TRODELVY is 2,856 days. Of this time, 2,150 days occurred during the testing phase of the regulatory review period, while 706 days occurred during the

approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective:* June 29, 2012. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on June 29, 2012.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262):* May 18, 2018. FDA has verified the applicant's claim that the biologics license application (BLA) for TRODELVY (BLA 761115) was initially submitted on May 18, 2018.

3. *The date the application was approved:* April 22, 2020. FDA has verified the applicant's claim that BLA 761115 was approved on April 22, 2020.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,780 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: Must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: November 15, 2021.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2021–25612 Filed 11–23–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Delegation of Authority

Notice is hereby given that I have withdrawn the delegations to the Director, Office for Civil Rights (OCR), or their successor, with respect to the Religious Freedom Restoration Act (RFRA) and the Religion Clauses of the First Amendment, as well as any other delegation of authority to OCR with respect to enforcing or complying with RFRA or the First Amendment.

On December 7, 2017, the then-Acting Secretary of the Department of Health and Human Services issued a notice, published on January 19, 2018 (83 FR 2804), that delegated authority for implementation and compliance with the Religious Freedom Restoration Act, 42 U.S.C. 2000bb *et seq.,* within the Department to the Director of OCR.

On January 15, 2021, the Secretary further delegated to OCR authority to receive and investigate complaints, conduct compliance reviews, provide technical assistance and training, evaluate complaint processing and provide reports, and ensure uniform compliance with the Religion Clauses of the First Amendment. This delegation was not published in the **Federal Register**.

The Department takes its obligations to comply with RFRA and the First Amendment seriously, and it will continue to do so. Department components have the greatest knowledge about their respective programs and are best able to determine whether the Department has a compelling interest in a particular action and whether less restrictive means are available to further that interest, critical aspects of the legal test under RFRA. Furthermore, under the current *Statement of Organization, Functions, and Delegations of Authority* for the Office of General Counsel (OGC), OGC provides legal advice to the Secretary, Deputy Secretary, and all subordinate organization components of the Department. *See* 85 FR 47228 (July 7, 2020). Department components, in consultation with OGC, have the responsibility, and are best positioned, to evaluate RFRA-based requests for exemptions, waivers, and modifications of program requirements in the programs they operate or oversee.

Department components, further, are best situated to craft exemptions or other modifications when required under RFRA and to monitor the impact of such exemptions or modifications on programs and those they serve. Moreover, they are best positioned to evaluate how their programs must be run to comply with the Free Exercise Clause and the Establishment Clause of the First Amendment.

I therefore rescind the December 7, 2017, and the January 15, 2021 delegations with respect to the Religion Clauses of the First Amendment and/or RFRA, as well as any other delegation of authority to OCR with respect to enforcing or complying with RFRA or the First Amendment. Effective today, I delegate responsibility to Department components to ensure full compliance with RFRA and other constitutional requirements. Department components must consult with OGC on such matters and provide appropriate consideration to RFRA- or Constitution-based objections or requests, as well as take any actions that may be appropriate.

This delegation of authority is effective upon date of signature.

Xavier Becerra,

Secretary, Department of Health and Human Services.

[FR Doc. 2021–25632 Filed 11–23–21; 8:45 am]

BILLING CODE 4153–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request Investigational Agent Accountability Record Forms and International Investigator Statement in the Conduct of Investigational Trials for the Treatment of Cancer (National Cancer Institute)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Charles Hall, Chief, Pharmaceutical Management Branch, Cancer Therapy Evaluation Program, Division of Cancer Diagnosis and Treatment, National Cancer Institute, 9609 Medical Center Drive, Bethesda, Maryland, 20892 or call non-toll-free number (240) 276–6575 or email your request, including your address to: *HallCh@mail.nih.gov.*

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** on September 14, 2021 (Vol. 86 FR 51168) and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Cancer Institute (NCI), National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

Proposed Collection: Investigational Agent Accountability Record Forms and International Investigator Statement in the Conduct of Investigational Trials for the Treatment of Cancer (National Cancer Institute), 0925–0613, Expiration Date 3/31/2022, REVISION, National Cancer Institute (NCI), National Institutes of Health (NIH).

Need and Use of Information Collection: The Food and Drug Administration (FDA) require Investigational New Drug Application (IND) sponsors to maintain adequate records on the shipment and disposition of agents to investigators. The agent accountability effort for National Cancer Institute/Division of Cancer Treatment and Diagnosis/Cancer Therapy Evaluation Program (NCI/DCTD/CTEP) is managed by the Pharmaceutical Management Branch (PMB) at CTEP. The Investigational Agent Accountability Records (a.k.a. Drug Accountability Record Forms—DARF) are used to provide a standardized method of tracking of agent disposition across all institutions participating in trials for which the NCI provides agent. Institutional auditors verify information on the agent accountability forms for compliance. In addition, PMB staff review Investigational Agent Accountability Record Forms against records maintained in PMB systems to ensure there is no inappropriate use or diversion of investigational agents. Additionally, the International Investigator Statement (IIS) will be used by non-U.S. investigators, that are unable to sign the FDA 1572 (OMB No. 0925–0753, Expiration 05/31/2024) to attest compliance with applicable country-specific regulations.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden are 4,831 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Category of respondent	Number of respondents	Number of responses per respondent	Average time per response (in hours)	Total annual burden hours
A1: Investigational Agent Accountability Record Form (DARF).	Individuals	760	20	4/60	1,013
A2: Investigational Agent Accountability Record for Oral Agents Form (DARF-Oral).	Individuals	2,280	20	4/60	3,040
A3: Electronic Agent Accountability Record Form (eDARF).	Individuals	760	20	1/60	253
A4: International Investigator Statement (IIS) (Initial Response).	Individuals	2,100	1	15/60	525
Totals		5,900	78,100		4,831

Dated: November 18, 2021.

Diane Kreinbrink,

Project Clearance Liaison, National Cancer Institute, National Institutes of Health.

[FR Doc. 2021–25605 Filed 11–23–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request; The Genetic Testing Registry (Office of the Director)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open

for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Taunton Paine, Director, Division of Scientific Data Sharing Policy, Office of Science Policy, NIH, 6705 Rockledge Dr., Suite 631, Bethesda, MD 20892, or call non-toll—free number (301) 496–9838, or Email your request, including your address to: *SciencePolicy@mail.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** on September 7, 2021, page 50140 (86 FR 50140) and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The Office of the Director (OD), National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

Proposed Collection Title: The Genetic Testing Registry, 0925–0651, Expiration Date 11/30/21–EXTENSION, Office of the Director (OD), National Institutes of Health (NIH).

Need and Use of Information Collection: Clinical laboratory tests are available for more than 18,000 genetic conditions. The Genetic Testing Registry (GTR) provides a centralized, online location for test developers, manufacturers, and researchers to voluntarily submit detailed information about the availability and scientific basis of their genetic tests. The GTR is of value to clinicians by providing information about the accuracy, validity, and usefulness of genetic tests. The GTR also highlights evidence gaps where additional research is needed. The GTR now also has tests for microbes like for SARS–CoV–2 to diagnose COVID–19.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 2,299.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average time per response (in hours)	Total annual burden hour
Laboratory Personnel Using Bulk Submission.	Minimal Fields	11	16	18/60	53
	Optional Fields	250	16	17/60	1133
Laboratory Personnel Not Using Bulk Submission.	Minimal Fields	84	16	30/60	672
	Optional Fields	57	16	29/60	441
Total		402	6432		2,299

Dated: November 18, 2021.

Lawrence A. Tabak,

Principal Deputy Director, National Institutes of Health.

[FR Doc. 2021–25670 Filed 11–23–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Deafness and Other Communication Disorders Advisory Council.

This is a virtual meeting and will be open to the public as indicated below. The URL link to this meeting is: *https://www.nidcd.nih.gov/about/advisory-council/upcoming-meetings.* The meeting is partially Closed to the public. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Deafness and Other Communication Disorders Advisory Council.

Date: January 27–28, 2022.

Closed: January 27, 2022, 10:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NSC, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Open: January 27, 2022, 1:00 p.m. to 4:00 p.m.

Agenda: Staff reports on divisional, programmatical, and special activities.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Open: January 28, 2022, 10:00 a.m. to 12:30 p.m.

Agenda: Staff reports on divisional, programmatical, and special activities.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Rebecca Wagenaar-Miller, Ph.D., Director, Division of Extramural Activities, NIDCD/NIH, 6001 Executive Boulevard, Rockville, MD 20852, (301) 496–8693, *rebecca.wagenaar-miller@nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *https://www.nidcd.nih.gov/about/advisory-council,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: November 19, 2021.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–25661 Filed 11–23–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2021–0845]

Area Maritime Security Advisory Committee (AMSC) for San Diego, CA

AGENCY: Coast Guard, DHS.

ACTION: Solicitation for membership.

SUMMARY: This notice requests individuals interested in serving on the San Diego Area Maritime Security Advisory Committee (AMSC) submit their applications for membership to the Captain of the Port (COTP) Sector San Diego. The Committee assists the Federal Maritime Security Coordinator (FMSC) in developing, reviewing, and updating the Area Maritime Security Plan for their area of responsibility.

DATES: Requests for membership should reach the U.S. Coast Guard COTP Sector San Diego by December 31st, 2021.

ADDRESSES: Applications for membership should be submitted to the Captain of the Port at the following address: Commander, Sector San Diego Attn: Mr. Kris Szczechowicz, San Diego AMSC Executive Secretary, 2710 N Harbor Drive, San Diego, CA 92101.

FOR FURTHER INFORMATION CONTACT: For questions about submitting an application or about the AMSC in general, contact Mr. Kris Szczechowicz, San Diego AMSC Executive Secretary, Phone: (619) 278–7089.

SUPPLEMENTARY INFORMATION:

Authority

Section 102 of the Maritime Transportation Security Act (MTSA) of 2002 (Pub. L. 107–295) added section 70112 to Title 46 of the U.S. Code, and authorized the Secretary of the Department in which the Coast Guard is operating to establish Area Maritime Security Advisory Committees for any port area of the United States. (See 46 U.S.C. 70116; 46 U.S.C. 70112; 33 CFR 1.05–1, 6.01; Department of Homeland Security Delegation No. 0170.1). The MTSA includes a provision exempting these AMSCs from the Federal Advisory Committee Act (FACA), Public Law 92–436, 86 Stat. 470 (5 U.S.C. app.2).

San Diego AMSC Mission

The AMSCs assists the Federal Maritime Security Coordinator in the development, review, update, and exercising of the AMS Plan for their area of responsibility. Such matters include, but are not limited to: Identifying critical port infrastructure and operations; Identifying risks (threats, vulnerabilities, and consequences); Determining mitigation strategies and implementation methods; Developing strategies to facilitate the recovery of the MTS after a Transportation Security Incident; Developing and describing the process to continually evaluate overall port security by considering consequences and vulnerabilities, how they may change over time, and what additional mitigation strategies can be applied; and Providing advice to, and assisting the Federal Maritime Security Coordinator in developing and maintaining the Area Maritime Security Plan.

The San Diego Area Maritime Security Committee was chartered by the Commander, Sector San Diego to study and consider issues related to security in the Port of San Diego, in addition to reviewing the proposed Area Maritime Security Plan and serve as a link to communicating threats to waterway users in the Port of San Diego and Southern California, and identifying and quantifying those threats. It serves to protect the Port of San Diego through improved security procedures and communication and as a forum to coordinate security procedures to decrease the vulnerability of resources in the Port of San Diego. It serves as an interface between regulators and industry, and will assist governmental agencies to implement policies and procedures to improve security in the Port of San Diego. Details regarding the specific objectives of the San Diego Maritime Security Committee can be found in the charter.

AMSC Composition

The composition of an AMSC, to include the San Diego AMSC, is prescribed under 33 CFR 103.305. Pursuant to that regulation, members may be selected from the Federal, Territorial, or Tribal government; the State government and political subdivision of the State; local public safety, crisis management, and emergency response agencies; law enforcement and security organizations; maritime industry, including labor; other port stakeholders having a special competence in maritime security; and port stakeholders affected by security practices and policies. Members of the AMSC should have at least five years of experience related to maritime or port security operations.

AMSC Membership

The San Diego AMSC has fourteen member positions. Members of the AMSC should have at least five years of experience related to maritime or port security operations. We are seeking to fill the following five vacancies with this solicitation:

Vice-Chairperson: The Vice Chairperson will act as Chairperson in the absence or incapacity of the Chairperson, or in the event of a vacancy in the office of the Chairperson. The ideal candidate for this position will have more than ten years of experience in security and/or emergency operations management with a significant amount of time spent working in the Port of San Diego or similar operational environments.

Chair and Co-Chairperson (Training and Exercise Subcommittee): This subcommittee assists in the management of the Area Maritime Security Training and Exercise Program requirements. This sub-committee coordinates and promotes training and exercise related activities in support of the San Diego AMSC, and will serve as a forum for the sharing of training and exercise related information with Port of San Diego stakeholders. This sub-committee provides vetting for the development, revision, and approval of revisions of the San Diego Area Maritime Security Plan. The ideal candidates for these positions will have experience in emergency management planning, exercise planning, and filled a role as a training officer for a maritime company or agency working in the Port of San Diego or similar operating environment.

Chair and Co-Chairperson (Preventative Radiological/Nuclear Detection Subcommittee): This subcommittee assists on matters building on the work performed and other matters involving Preventative Radiological/Nuclear Detection (PRND) technology and equipment, sustainment, training, exercises, and operations within the San Diego area. This sub-committee will serve as the primary interface for agencies in the San Diego AMSC region with existing or developing maritime PRND capabilities.

The PRND Subcommittee will coordinate and promote the development of a sustainable, regional PRND capability among the federal, state, and local agencies that make up the San Diego AMSC. The ideal candidates for these positions will have experience in the PRND field (such as participation in the legacy West Coast Maritime Pilot program and the PRND Task Force of CalEMA) and be knowledgeable about maritime domain awareness and port security issues of the San Diego region.

Applicants may be required to pass an appropriate security background check prior to appointment to the committee. Members' terms of office will be for five years; however, a member is eligible to serve additional terms of office. Members will not receive any salary or other compensation for their service on an AMSC. In support of the USCG policy on gender and ethnic diversity, we encourage qualified women and members of minority groups to apply.

Request for Applications

Please submit an application or nomination to the address indicated under the **ADDRESSES** section of this notice. Those seeking membership are not required to submit formal applications to the local FMSC; however, because we do have an obligation to ensure that a specific number of members have the prerequisite maritime security experience, we encourage the submission of resumes highlighting experience in the maritime and security industries.

The Department of Homeland Security does not discriminate in selection of Committee members on the basis of race, color, religion, sex, national origin, political affiliation, sexual orientation, gender identity, marital status, disability and genetic information, age, membership in an employee organization, or other non-merit factor. The Department of Homeland Security strives to achieve a widely diverse candidate pool for all of its recruitment actions.

Dated: November 18, 2021.

Timothy J. Barelli,

Captain, U.S. Coast Guard, Federal Maritime Security Coordinator—San Diego.

[FR Doc. 2021–25610 Filed 11–23–21; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2020–0016]

Meetings To Implement Pandemic Response Voluntary Agreement Under Section 708 of the Defense Production Act

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Announcement of meetings.

SUMMARY: The Federal Emergency Management Agency (FEMA) is holding a series of meetings to implement the Voluntary Agreement for the Manufacture and Distribution of Critical Healthcare Resources Necessary to Respond to a Pandemic.

DATES: The first meeting took place on Wednesday, November 17, 2021, from 11 a.m. to 12 p.m. Eastern Time (ET). The second meeting will take place on Wednesday, December 1, 2021, from 10:30 a.m. to 11 a.m. ET. The third meeting will take place on Thursday, December 2, 2021, from 1 p.m. to 2:30 p.m. ET. The fourth meeting will take place on Wednesday, December 15, 2021, from 10:30 a.m. to 11 a.m. ET.

FOR FURTHER INFORMATION CONTACT: Robert Glenn, Office of Business, Industry, Infrastructure Integration, via email at *OB3I@fema.dhs.gov* or via phone at (202) 212–1666.

SUPPLEMENTARY INFORMATION: Notice of these meetings is provided as required by section 708(h)(8) of the Defense Production Act (DPA), 50 U.S.C. 4558(h)(8), and consistent with 44 CFR part 332.

The DPA authorizes the making of ''voluntary agreements and plans of action'' with representatives of industry, business, and other interests to help provide for the national defense.[1] The President's authority to facilitate voluntary agreements with respect to responding to the spread of COVID–19 within the United States was delegated to the Secretary of Homeland Security in Executive Order 13911.[2] The Secretary of Homeland Security further delegated this authority to the FEMA Administrator.[3]

On August 17, 2020, after the appropriate consultations with the Attorney General and the Chairman of the Federal Trade Commission, FEMA completed and published in the **Federal Register** a ''Voluntary Agreement, Manufacture and Distribution of Critical Healthcare Resources Necessary to Respond to a Pandemic'' (Voluntary Agreement).[4] Unless terminated earlier, the Voluntary Agreement is effective until August 17, 2025, and may be extended subject to additional approval by the Attorney General after consultation with the Chairman of the Federal Trade Commission. The Agreement may be used to prepare for or respond to any pandemic, including COVID–19, during that time.

On December 7, 2020, the first plan of action under the Voluntary Agreement—the Plan of Action to Establish a National Strategy for the Manufacture, Allocation, and Distribution of Personal Protective Equipment (PPE) to Respond to COVID–19 (PPE Plan of Action)—was finalized.[5] The PPE Plan of Action established several sub-committees under the Voluntary Agreement, focusing on different aspects of the PPE Plan of Action.

On May 24, 2021, four additional plans of action under the Voluntary Agreement—the Plan of Action to Establish a National Strategy for the Manufacture, Allocation, and Distribution of Diagnostic Test Kits and other Testing Components to respond to COVID–19, the Plan of Action to Establish a National Strategy for the Manufacture, Allocation, and Distribution of Drug Products, Drug Substances, and Associated Medical Devices to respond to COVID–19, the Plan of Action to Establish a National Strategy for the Manufacture, Allocation, and Distribution of Medical Devices to respond to COVID–19, and the Plan of Action to Establish a National Strategy for the Manufacture, Allocation, and Distribution of Medical Gases to respond to COVID–19—were finalized.[6] These plans of action established several sub-committees under the Voluntary Agreement, focusing on different aspects of each plan of action.

On October 15, 2021, the sixth plan of action under the Voluntary

[1] 50 U.S.C. 4558(c)(1).

[2] 85 FR 18403 (Apr. 1, 2020).

[3] DHS Delegation 09052, Rev. 00.1 (Apr. 1, 2020); DHS Delegation Number 09052 Rev. 00 (Jan. 3, 2017).

[4] 85 FR 50035 (Aug. 17, 2020). The Attorney General, in consultation with the Chairman of the Federal Trade Commission, made the required finding that the purpose of the voluntary agreement may not reasonably be achieved through an agreement having less anticompetitive effects or without any voluntary agreement and published the finding in the **Federal Register** on the same day. 85 FR 50049 (Aug. 17, 2020).

[5] *See* 85 FR 78869 (Dec. 7, 2020). *See also* 85 FR 79020 (Dec. 8, 2020).

[6] *See* 86 FR 27894 (May 24, 2021). *See also* 86 FR 28851 (May 28, 2021).

Agreement—the Plan of Action to Establish a National Strategy for the Coordination of National Multimodal Healthcare Supply Chains to Respond to COVID–19—was finalized.[7] This plan of action established several sub-committees under the Voluntary Agreement, focusing on different transportation categories.

The meetings are chaired by the FEMA Administrator's delegates from the Office of Response and Recovery (ORR) and Office of Policy and Program Analysis (OPPA), attended by the Attorney General's delegates from the U.S. Department of Justice, and attended by the Chairman of the Federal Trade Commission's delegates. In implementing the Voluntary Agreement, FEMA adheres to all procedural requirements of 50 U.S.C. 4558 and 44 CFR part 332.

Meeting Objectives: The objectives of the first, second, and fourth meetings are as follows:

1. Meet the Sub-Committee for Oxygen under the Medical Gases Plan of Action to establish priorities related to the COVID–19 response under the Voluntary Agreement.
2. Gather Sub-Committee Participants and Attendees to ask targeted questions for situational awareness related to the Sub-Committee for Oxygen.
3. Identify potential Objectives and Actions that should be completed under the Sub-Committee for Oxygen.
4. Identify pandemic-related information gaps and areas that merit sharing by holding recurring meetings of the Sub-Committee for Oxygen with key stakeholders.

Meeting Objectives: The objectives of the third meeting are as follows:

1. Convene the Sub-Committee to Define Requirements under the previously-established Medical Devices Plan of Action to assess its status related to COVID–19 response under the Voluntary Agreement.
2. Gather Sub-Committee Participants and Attendees to ask targeted questions for situational awareness.
3. Identify pandemic-related supply chain issues, information gaps, and areas for potential additional discussion.
4. Identify potential Objectives and Actions which correspond to Sub-Committees. These will be held for further discussion under those Sub-Committees.

Meetings Closed to the Public: By default, the DPA requires meetings held to implement a voluntary agreement or plan of action be open to the public.[8] However, attendance may be limited if the Sponsor[9] of the voluntary agreement finds that the matter to be discussed at a meeting falls within the purview of matters described in 5 U.S.C. 552b(c), such as trade secrets and commercial or financial information.

The Sponsor of the Voluntary Agreement, the FEMA Administrator, found that these meetings to implement the Voluntary Agreement involve matters which fall within the purview of matters described in 5 U.S.C. 552b(c) and the meetings are therefore closed to the public.

Specifically, these meetings may require participants to disclose trade secrets or commercial or financial information that is privileged or confidential. Disclosure of such information allows for meetings to be closed to the public pursuant to 5 U.S.C. 552b(c)(4).

The success of the Voluntary Agreement depends wholly on the willing participation of the private sector participants. Failure to close these meetings to the public could reduce active participation by the signatories due to a perceived risk that sensitive company information could be prematurely released to the public. A premature public disclosure of a private sector participant's information could reduce trust and support for the Voluntary Agreement.

A resulting loss of support by the participants for the Voluntary Agreement would significantly frustrate the implementation of the Agency's objectives. Thus, these meeting closures are permitted pursuant to 5 U.S.C. 552b(c)(9)(B).

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2021–25650 Filed 11–23–21; 8:45 am]

BILLING CODE 9111–19–P

[7] *See* 86 FR 57444 (Oct. 15, 2021).

[8] *See* 50 U.S.C. 4558(h)(7).

[9] "[T]he individual designated by the President in subsection (c)(2) [of section 708 of the DPA] to administer the voluntary agreement, or plan of action." 50 U.S.C. 4558(h)(7).

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2021–0036]

Privacy Act of 1974; Computer Matching Program

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Notice of a re-established matching program.

SUMMARY: Pursuant to the Privacy Act of 1974, as amended by the Computer Matching and Privacy Act of 1988 and the Computer Matching and Privacy Protections Amendment of 1990 (Privacy Act), and Office of Management and Budget (OMB) guidance on the conduct of matching programs, notice is hereby given of the re-establishment of a matching program between the Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS), and the Texas Workforce Commission (TWC). TWC will match against DHS–USCIS data to verify the immigration status of non-U.S. citizens who apply for federal benefits (Benefit Applicants) under Unemployment Compensation (UC) that TWC administers to determine whether Benefit Applicants possess the requisite immigration status to be eligible for the UC it administers.

DATES: Please submit comments on or before December 27, 2021. The matching program will be effective on December 27, 2021 unless comments have been received from interested members of the public that require modification and republication of the notice. The matching program will continue for 18 months from the beginning date and may be extended an additional 12 months if the conditions specified in 5 U.S.C. 552a(o)(2)(D) have been met.

ADDRESSES: You may submit comments, identified by docket number DHS–2021–0036 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–343–4010.
- *Mail:* Lynn Parker Dupree, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528–0655.

Instructions: All submissions received must include the agency name and docket number DHS–2021–0036. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

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

FOR FURTHER INFORMATION CONTACT: To obtain additional information about this matching program and the contents of this Computer Matching Agreement between DHS–USCIS and TWC, please view this Computer Matching Agreement at the following website: *https://www.dhs.gov/publication/computer-matching-agreements-and-*

notices. For general questions about this matching program, contact Jonathan M. Mills, Acting Chief, USCIS SAVE Program at (202) 306–9874. For general privacy questions, please contact Lynn Parker Dupree, (202) 343–1717, Chief Privacy Officer, Department of Homeland Security, Washington, DC 20528–0655.

SUPPLEMENTARY INFORMATION: DHS–USCIS provides this notice in accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503) and the Computer Matching and Privacy Protection Amendments of 1990 (Pub. L. 101–508) (Privacy Act); Office of Management and Budget (OMB) Final Guidance Interpreting the Provisions of Public Law 100–503, the Computer Matching and Privacy Protection Act of 1988, 54 FR 25818 (June 19, 1989); and OMB Circular A–108, 81 FR 94424 (December 23, 2016).

PARTICIPATING AGENCIES:

DHS–USCIS and TWC.

AUTHORITY FOR CONDUCTING THE MATCHING PROGRAM:

Section 121 of the Immigration Reform and Control Act (IRCA) of 1986, Public Law 99–603, as amended by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Public Law 104–193, 110 Stat. 2168 (1996), requires DHS to establish a system for the verification of immigration status of noncitizen applicants for, or recipients of, certain types of benefits as specified within IRCA, and to make this system available to state agencies that administer such benefits. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Public Law 104–208, 110 Stat. 3009 (1996) grants federal, state or local government agencies seeking to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the agency with the authority to request such information from DHS–USCIS for any purpose authorized by law.

PURPOSE:

This Agreement re-stablishes the terms and conditions governing TWC's access to, and use of, the DHS–USCIS Systematic Alien Verification for Entitlements (SAVE) Program, which provides immigration status information from federal immigration records to authorized users, and to comply with the Computer Matching and Privacy Protection Act of 1988 (CMPPA). TWC will use SAVE to verify the immigration status of non-U.S. citizens who apply for federal benefits (Benefit Applicants) under the Unemployment Compensation (UC) benefits program that it administers. TWC will use the information obtained through SAVE to determine whether Benefit Applicants possess the requisite immigration status to be eligible for the UC benefits administered by TWC. This Agreement describes the respective responsibilities of DHS–USCIS and TWC to verify Benefit Applicants' immigration status while safeguarding against unlawful discrimination and preserving the confidentiality of information received from the other party. The requirements of this Agreement will be carried out by authorized employees and/or contractor personnel of DHS–USCIS and TWC.

CATEGORIES OF INDIVIDUALS:

The individuals about whom DHS–USCIS maintains information, which is contained in its Verification Information System (VIS) database used by the SAVE Program to verify immigration status, that are involved in this matching program include noncitizens (meaning any person as defined in Immigration and Nationality Act section 101(a)(3)), those naturalized, and to the extent those that have applied for Certificates of Citizenship, derived U.S. citizens, on whom DHS–USCIS has a record as an applicant, petitioner, sponsor, or beneficiary. The individuals about whom TWC maintains information that is involved in this matching program include non-citizen Benefit Applicants for, or recipients of, UC administered by TWC.

CATEGORIES OF RECORDS:

Data elements to be matched between TWC records and DHS–USCIS federal immigration records include the following: Last Name, First Name, Middle Name, Date of Birth, Immigration Numbers (*e.g.,* Alien Registration/USCIS Number, I–94 Number, SEVIS ID Number, Certificate of Naturalization Number, Certificate of Citizenship Number, or Unexpired Foreign Passport Number), and Other Information from Immigration Documentation (for example, Country of Birth, Date of Entry, Employment Authorization Category). Additional Data elements provided to TWC from DHS–USCIS records related to the match may include: Citizenship or Immigration Data (for example, immigration class of admission and/or employment authorization), Sponsorship Data (for example, name, address, and social security number of Form I–864/I–864EZ sponsors and Form I–864A household members, when applicable) and Case Verification Number.

SYSTEM OF RECORDS:

DHS/USCIS–004 Systematic Alien Verification for Entitlements (SAVE) System of Records Notice, 85 FR 31798 (May 27, 2020).

Lynn Parker Dupree,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2021–25685 Filed 11–23–21; 8:45 am]

BILLING CODE 9110–9L–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0069]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Application by Refugee for Waiver of Inadmissibility Grounds

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment on this proposed extension of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until January 24, 2022.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0069 in the body of the letter, the agency name and Docket ID USCIS–2006–0042. Submit comments via the Federal eRulemaking Portal website at *https://www.regulations.gov* under e-Docket ID number USCIS–2006–0042.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, telephone number (240) 721–3000 (This is not a

toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *https://www.uscis.gov,* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions or additional information by visiting the Federal eRulemaking Portal site at: *https://www.regulations.gov* and entering USCIS–2006–0042 in the search box. All submissions will be posted, without change, to the Federal eRulemaking Portal at *https://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *https://www.regulations.gov*.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(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 submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application by Refugee for Waiver of Inadmissibility Grounds.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–602; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The data collected on Form I–602, Application by Refugee for Waiver of Inadmissibility Grounds, will be used by USCIS to determine eligibility for waivers, and to report to Congress the reasons for granting waivers.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–602 is 240 and the estimated hour burden per response is 8 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 1,920 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $30,900.

Dated: November 19, 2021.

Samantha L. Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2021–25663 Filed 11–23–21; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0028]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Petition To Classify Orphan as an Immediate Relative; Application for Advance Processing of an Orphan Petition; Supplement 1, Listing of an Adult Member of the Household; Supplement 2, Consent To Disclose Information

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment on this proposed extension of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until January 24, 2022.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0028 in the body of the letter, the agency name and Docket ID USCIS–2008–0020. Submit comments via the Federal eRulemaking Portal website at *https://www.regulations.gov* under e-Docket ID number USCIS–2008–0020.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, telephone number (240) 721–3000 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *https://www.uscis.gov,* or call the

USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions or additional information by visiting the Federal eRulemaking Portal site at: *https://www.regulations.gov* and entering USCIS–2008–0020 in the search box. All submissions will be posted, without change, to the Federal eRulemaking Portal at *https://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *https://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(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 submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Petition to Classify Orphan as an Immediate Relative; Application for Advance Processing of an Orphan Petition; Supplement 1, Listing of an Adult Member of the Household; Supplement 2, Consent to Disclose Information.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–600; I–600A; I–600/I–600A Supplement 1; I–600/I–600A Supplement 2; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. A U.S. adoptive parent may file a petition to classify an orphan as an immediate relative through Form I–600 under section 101(b)(1)(F) of the INA. A U.S. prospective adoptive parent may file Form I–600A in advance of the Form I–600 filing and USCIS will determine the prospective adoptive parent's eligibility to file Form I–600A and their suitability and eligibility to properly parent an orphan. A U.S. adoptive parent may file a petition to classify an orphan as an immediate relative through Form I–600 under section 101(b)(1)(F) of the INA. If a U.S. prospective/adoptive parent has an adult member of his or her household, as defined at 8 CFR 204.301, the prospective/adoptive parent must include the Supplement 1 when filing both Form I–600A and Form I–600. The U.S. prospective/adoptive parent files Supplement 2 to authorize USCIS to disclose case-related information to adoption service providers that would otherwise be protected under the Privacy Act, 5 U.S.C. 552a. Authorized disclosures will assist USCIS in the adjudication of Forms I–600A and I–600.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I–600 is 1,200 and the estimated hour burden per response is 1 hour; the estimated total number of respondents for the information collection Form I–600A is 2,000 and the estimated hour burden per response is 1 hour; the estimated total number of respondents for the information collection Form I–600A Supplement 1 is 301 and the estimated hour burden per response is 1 hour; the estimated total number of respondents for the information collection Form I–600A Supplement 2 is 1,260 and the estimated hour burden per response is 0.25 hours; the estimated total number of respondents for the Home Study information collection is 2,500 and the estimated hour burden per response is 25 hours; the estimated total number of respondents for the biometrics submission is 2,520 and the estimated hour burden per response is 1.17 hours; and the estimated total number of respondents for the Biometrics—DNA information collection is 2 and the estimated hour burden per response is 6 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 69,276 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $7,759,232.

Dated: November 19, 2021.

Samantha L. Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2021–25659 Filed 11–23–21; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0061]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Application for Regional Center Under the Immigrant Investor Program

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this proposed extension of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until January 24, 2022.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0061 in the body of the letter, the agency name and Docket ID USCIS–

2007–0046. Submit comments via the Federal eRulemaking Portal website at *https://www.regulations.gov* under e-Docket ID number USCIS–2007–0046.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, telephone number (240) 721–3000 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *https://www.uscis.gov,* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Background

Statutory authorization to set aside visas under the EB–5 Immigrant Investor Regional Center Program expired at midnight on June 30, 2021. *See* Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act 1993, Public Law 102–395, 106 Stat. 1828, § 610(b), as amended. The Regional Center Program was originally created as a pilot program with authorization to set aside visas under the program for a five-year period. However, since its advent in 1992, Congress has reauthorized or extended the visa set-aside under the program at least 30 times, most recently through June 30, 2021. Consolidated Appropriations Act of 2021, Public Law 116–120, div. O, title I, § 104, 134 Stat. 1182, 2148 (substituting ''June 30, 2021'' for ''September 30, 2015'' in § 610(b) of Public Law 102–395). Based on the history of prior Congressional reauthorizations and extensions, absent any indication that future reauthorization is not forthcoming, and also in the interests of keeping Form I–924 current, USCIS has decided to extend this form without change.

Even if the visa set-aside under the EB–5 Immigrant Investor Regional Center Program is not reauthorized, USCIS would need to maintain this form for the limited use of when the application indicates that it is an amendment to an existing regional center's name, organizational structure, ownership, or administration.

Comments

You may access the information collection instrument with instructions or additional information by visiting the Federal eRulemaking Portal site at: *https://www.regulations.gov* and entering USCIS–2007–0046 in the search box. All submissions will be posted, without change, to the Federal eRulemaking Portal at *https://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *https://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(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 submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Regional Center Under the Immigrant Investor Program.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–924, I–924A; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals representing any economic unit, public or private, in the United States that is involved with promoting economic growth. This collection will be used by such individuals to ask USCIS to be designated as a regional center under the Immigrant Investor Program, to request an amendment to a previously approved regional center designation, or to demonstrate continued eligibility for designation as a regional center under the Immigrant Investor Program.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–924 is 21 and the estimated hour burden per response is 51 hours. The estimated total number of respondents for the information collection I–924A is 625 and the estimated hour burden per response is 14 hours. The estimated total number of respondents for Compliance Review is 40 and the estimated hour burden per response is 24 hours. The estimated total number of respondents for the information collection during the Site Visit is 40 and the estimated hour burden per response is 16 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 11,421 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $2,344,605.

Dated: November 19, 2021.

Samantha L Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2021–25662 Filed 11–23–21; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7041–N–06]

60-Day Notice of Proposed Information Collection: Moving To Work Stepped and Tiered Rent Demonstration Evaluation

AGENCY: Office of Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* January 24, 2022.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Anna P. Guido, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–5534 (this is not a toll-free number) or email at *Anna.P.Guido@hud.gov* for a copy of the proposed forms or other available information.

FOR FURTHER INFORMATION CONTACT: Anna P. Guido, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Anna P. Guido at *Anna.P.Guido@hud.gov* or telephone 202–402–5535. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Moving to Work (MTW) Cohort 2 Stepped and Tiered Rent Demonstration Evaluation.

OMB Approval Number: Pending.

Type of Request: New.

Form Number: N/A.

Description of the need for the information and proposed use: HUD has selected 10 Public Housing Agencies (PHAs) to participate in the second cohort of the Moving to Work (MTW) Expansion, Stepped and Tiered Rent Demonstration (STRD). These PHAs will implement an alternative rent policy (a stepped rent or tiered rent) that is intended to reduce PHA administrative burden and increase self-sufficiency of assisted households. Five PHAs will implement a stepped rent and five PHAs will implement a tiered rent. HUD's Office of Policy Development and Research (PD&R) will evaluate the impacts of those alternative rent policies, using a randomized controlled trial. The evaluation will rely on data from a variety of sources, including new information collection efforts proposed in this Notice. HUD has contracted with MDRC to conduct the first phase of the evaluation, including random assignment, baseline data collection, and monitoring PHA implementation.

Within the 10 participating PHAs, eligible households will be randomly assigned to have their rent calculated under the new rules (stepped/tiered rent) or old rules (the Brooke rent, typically 30% of household income). Eligible households will be non-elderly, non-disabled participants in the public housing and housing choice voucher program. Prior to random assignment, each household will be asked to complete a baseline information form (BIF) and provide informed consent to authorize HUD's evaluator to use their data for the evaluation. The BIF will provide important information not otherwise available from HUD's administrative data, such as whether the household has significant barriers to employment. The BIF will average approximately 7 minutes long.

MDRC will also conduct interviews with staff from participating PHAs, to better understand their experience implementing the new rent policies. For the first phase of the evaluation, MDRC is expected to conduct two rounds of staff interviews with each PHA. This collection request focuses on the first of the two rounds of staff data collection. During the first round, MDRC expects to interview up to ten staff per PHA (reflecting a mix of executive management staff, public housing and HCV directors, and public housing and HCV specialists). The mode will be a mix of one-on-one interviews and group interviews, with small groups of 2–3 staff performing similar roles.

Respondents: Recipients of HUD housing assistance participating in the Stepped and Tiered Rent Demonstration; Staff with PHAs participating in the Demonstration.

Estimated Number of Respondents: Up to 25,000 study participants who will complete the baseline survey; 100 PHA staff interviewees.

Frequency of Response: Once (BIF); Once for staff included in Round 1 staff interviews.

Average Hours per Response: The BIF will take 7 minutes per response (.12 hour). PHA staff interviews will take one hour, on average.

TOTAL ESTIMATED BURDENS

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Baseline Information Form (household survey).	25,000	1	25,000	.12	3,000	$9.43	$14,145 (12,500 Employed sample members * $9.43 * 0.12 hour).
PHA staff interviews.	100	1	100	1	100	34.64	$3,464 (100 interviews * $34.64 * 1 hr).
Total	25,100	.....	.....	.....	3,100	.....	$17,609

For the Baseline Information Form Hourly Cost Per Response, Households in the STRD will range widely in employment position and earnings. We have estimated the average prevailing minimum hourly wage across the ten STRD sites at $9.43, and further assume that about 50 percent of the participants to be employed at the time of survey response.

For the PHA staff interviews Hourly Cost Per Response, for program staff participating in interviews, the estimate uses the median hourly wages of selected occupations (classified by Standard Occupational Classification (SOC) codes) was sourced from the Occupational Employment Statistics from the U.S. Department of Labor's Bureau of Labor Statistics.

Potentially relevant occupations and their median hourly wages are:

Occupation	SOC code	Mean hourly wage rate
Community and Social Service Specialist	21–1099	$25.64
Social/community Service Manager	11–9151	44.24
Chief Executives	11–1011	59.86

Source: Occupational Employment Statistics, accessed online September 29, 2021 at *http://www.bls.gov/oes/current/oes_stru.htm.*
To estimate cost burden to program staff respondents, we use an average of the occupations listed weighted by expected respondent distribution for those listed above, or $34.64/hr.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(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) 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 collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

The General Deputy Assistant Secretary for Policy Development and Research,

Todd M. Richardson, having reviewed and approved this document, is delegating the authority to electronically sign this document to submitter, Chaneeka Dessesow, who is the Federal Register Liaison for HUD, for purposes of publication in the **Federal Register**.

Chaneeka Dessesow,

Federal Register Liaison for the Department of Housing and Urban Development.

[FR Doc. 2021–25655 Filed 11–23–21; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6298–N–01]

Availability of HUD's Fiscal Year 2019 Service Contract Inventory

AGENCY: Office of the Chief Procurement Officer, Department of Housing and Urban Development (HUD).

ACTION: Notice.

SUMMARY: This notice advises of the availability to the public of service contracts awarded by HUD in Fiscal Year (FY) 2019.

FOR FURTHER INFORMATION CONTACT: Dr. Akinsola A. Ajayi, Assistant Chief Procurement Officer, Office of Policy, Systems and Risk Management, Office of the Chief Procurement Officer, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; telephone number 202–402–6728 (this is not a toll-free number) and fax number 202–708–8912.

SUPPLEMENTARY INFORMATION: In accordance with section 743 of Division C of the Consolidated Appropriations Act of 2010 (Pub. L. 111–117, approved December 16, 2009, 123 Stat. 3034, at 123 Stat. 3216), HUD is publishing this notice to advise the public of service contracts inventories that were awarded in FY 2018. The inventories are organized by function and are reviewed by HUD to better understand how contracted services are used to support HUD's primary mission, to insure HUD maintains an adequate workforce for operations and to research whether contractors were performing inherently governmental functions.

The inventory was developed in accordance with guidance issued on November 5, 2010 by the Office of Management and Budget's Office Federal Procurement Policy (OFPP). OFPP's guidance is available at *https://obamawhitehouse.archives.gov/sites/default/files/omb/procurement/memo/service-contract-inventories-guidance-11052010.pdf.*

HUD has posted its inventory and a summary of the inventory on the Department of Housing and Urban Development's homepage at the following link: *http://portal.hud.gov/hudportal/HUD?src=/program_offices/cpo/sci.*

Akinsola A. Ajayi,

Assistant Chief Procurement Officer.

[FR Doc. 2021–25710 Filed 11–23–21; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORM00000–L12200000.DF0000–21X. HAG21–0088]

Notice of Public Meetings, Western Oregon Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Western Oregon Resource Advisory Council (RAC) will meet as follows.

DATES: The Western Oregon RAC will meet January 10 to 11 and conduct a field tour on January 12, 2022. Each meeting will begin at 9 a.m. and adjourn at approximately 3 p.m. The field tour will commence at 9 a.m. and conclude around 4 p.m. The field tour and meetings are open to the public.

ADDRESSES: The meetings will be held virtually over the Zoom platform. Those wishing to participate in the Zoom meetings must register at least 2 weeks in advance of the meetings. The link to register for the January RAC Zoom meetings is: *https://blm.zoomgov.com/webinar/register/WN_pLpbh88OQmq55ry73zC-CA.*

The RAC will take a field tour of the Edson Campground and Sixes River Campground on Wednesday, January 12. The RAC will meet at 9 a.m. at the BLM Coos Bay District Office, 1300 Airport Lane, North Bend, Oregon, and arrive at the Edson Campground at 10:45 a.m., returning to the BLM Coos Bay District Office at around 4 p.m.

FOR FURTHER INFORMATION CONTACT: Kyle Sullivan, Public Affairs Specialist, Medford District, 3040 Biddle Road, Medford, OR 97504; phone: (541) 618–2340; email: *ksullivan@blm.gov*. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at (800)877–8339 to contact Mr. Sullivan during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The 15-member Western Oregon RAC advises the Secretary of the Interior, through the BLM, on a variety of public-land issues across public lands in Western Oregon, including the Coos Bay, Medford, Northwest Oregon, and Roseburg Districts and part of the Lakeview District. At the January meeting, the RAC will review the Secure Rural School Title II funding and recreation fee proposal process and focus on review of Secure Rural School Title II funding projects. On January 12, the RAC will visit the Edson Campground and Sixes River Campground to prepare for review of potential recreation fee proposals.

The public is welcome to attend the field tour and must provide their own transportation and meals. Individuals who plan to attend must RSVP to the BLM Medford District Office at least 2 weeks in advance of the field tour (see **FOR FURTHER INFORMATION CONTACT**). Please indicate whether you need special assistance, such as sign language interpretation and other reasonable accommodations. The field tour will follow current Centers for Disease Control and Prevention COVID–19 guidance regarding social distancing and mask wearing.

The meetings are open to the public, and public comment periods will be held on January 10 and 11, 2022, at 2:30 p.m. each day. Depending on the number of persons wishing to comment and the time available, time allotted for individual oral comments may be limited. The public may submit written comments to the RAC by emailing the RAC coordinator at *ksullivan@blm.gov*.

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.

Previous minutes, membership information, and upcoming agendas are available at: *https://www.blm.gov/get-involved/resource-advisory-council/near-you/oregon-washington*. Detailed minutes for the RAC meetings are also maintained in the Medford District Office and will be available for public inspection and reproduction during regular business hours within 90 days following the meeting.

(Authority: 43 CFR 1784.4–2)

Elizabeth R. Burghard,

Medford District Manager, (Designated Federal Officer).

[FR Doc. 2021–25666 Filed 11–23–21; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NER–LOWE–31780; PX.XLOWELAND.00.1]

Minor Boundary Revision at Lowell National Historical Park

AGENCY: National Park Service, Interior.

ACTION: Notification of boundary revision.

SUMMARY: The boundary of Lowell National Historical Park is modified to include two parcels of land with a total of approximately 1.66 acres located in the City of Lowell, Middlesex County, Massachusetts, adjoining the Park. The United States of America acquired an easement over these properties from the City of Lowell in exchange for federal real property interests conveyed to the City.

DATES: The effective date of this boundary revision is November 24, 2021.

ADDRESSES: The map depicting this boundary revision is available for inspection at the following locations: National Park Service, Interior Region 1, Land Resources Program Center, 115 John Street, 5th Floor, Lowell, MA 01852, and National Park Service, Department of the Interior, 1849 C Street NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Realty Officer Jennifer Cherry, National Park Service, Interior Region 1, Land Resources Program Center, 115 John Street, 5th Floor, Lowell, MA 01852, telephone (978) 970–5260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to 16 U.S.C. 410cc–11(b), the boundary of Lowell National Historical Park is modified to include two adjoining tracts. The first property is Parcel ID No. 0160–1915–0350.4–0000 (350.4 Dutton Street) with 1.48 acres of land. The second property is a 13-foot-wide strip of land running approximately 607 feet along the north side of Father Morissette Boulevard between Aiken Street and James Street with approximately 0.18 acre of land. The boundary revision is depicted on Map No. 475/142,414A, dated November 2019.

16 U.S.C. 410cc–11(b) states that minor revisions of the Lowell National Historical Park boundary may be made by publication of a boundary description in the **Federal Register** subject to the consent of the city manager and city council of Lowell and after timely notice in writing is given to the Congress. The city manager and city council of Lowell consented to this boundary revision and Congress was notified.

Gay Vietzke,

Regional Director, Interior Region 1.

[FR Doc. 2021–25644 Filed 11–23–21; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Telemanagement Forum

Notice is hereby given that, on October 19, 2021, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), TM Forum, A New Jersey Non-Profit Corporation (''The Forum'') filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, the following entities have become members of the Forum: Acceldata, Inc., Palo Alto, CA; Affirmed Networks, Inc., Acton, MA; Akamanta, Fort Lauderdale, FL; Altiostar Networks, Inc., Tewksbury, MA; Anodot, Raanana, ISRAEL; Axiata Digital Labs Pte Ltd, Colombo, SRI LANKA; Beijing ZZNode Technologies Co., Ltd., Beijing, PEOPLE'S REPUBLIC OF CHINA; BroadTech Technology Co., Ltd., Chongqing, PEOPLE'S REPUBLIC OF CHINA; B.YOND Inc., Frisco, TX; China Information Technology Designing Consulting Institute Co., Ltd., Beijing, PEOPLE'S REPUBLIC OF CHINA; China Unitechs Co., Ltd., Shanghai, PEOPLE'S

REPUBLIC OF CHINA; Circles Life Asia Technology Pte. Ltd., Singapore, SINGAPORE; CityFibre, London, UNITED KINGDOM; Cloudera, Inc., Palo Alto, CA; Commercetools GmbH, Munich, GERMANY; Confluent Europe Ltd., London, UNITED KINGDOM; Cyient Ltd., Hyderabad, INDIA; Empirix Inc., Billerica, MA; Eureka.ai, Bellevue, WA; F2V CONSEIL, Lyon, FRANCE; Finance University under the Government of the Russian Federation, Moscow, RUSSIA; Future Connections Holding B.V., Etten-Leur, NETHERLANDS; Globys, Inc., Seattle, WA; Gotransverse, Austin, TX; HCL Technologies, Noida, INDIA; Indra Company Brasil Tecnologia Ltda., São Paulo, BRAZIL; Integsoft SA de CV, Coauhuila, MEXICO; Invia Pty Ltd, North Ryde, AUSTRALIA; Jean-Luc Tymen, Bordeaux, FRANCE; L3Harris Technologies, Inc., Melbourne, FL; Lancaster University, Lancaster, UNITED KINGDOM; Lasse Degner, Löhne, GERMANY; Logate d.o.o., Podgorica, MONTENEGRO; MATRIXX Software, Inc., Foster City, CA; Maxis Broadband Sdn. Bhd, Kuala Lumpur, MALAYSIA; MIND C.T.I. Ltd, Yoqneam Ilit, ISRAEL; Moflix AG, Wollerau, SWITZERLAND; Nae Costa Rica Business and Services S.R.L, San Jose, COSTA RICA; Neterra EOOD, Sofia, BULGARIA; NewAgent Business Consulting & Solutions, Jaraguá do Sul, BRAZIL; NOS Technology—Concepção, Construção e Gestão de Redes de Comunicações, S.A., Porto, PORTUGAL; Nuevatel PCS de Bolivia, La Paz, BOLIVIA; ParcelLab GmbH, München, GERMANY; PiA Bilisim Hizmetleri A.S., Istanbul, TURKEY; Qeema Consultancy and Technology Service, Cairo, EGYPT; Red Hat, Inc., Raleigh, NC; S4 Digital, Lisbon, PORTUGAL; SALAR LLC FZE, Dubai, UAE; Selector AI, Santa Clara, CA; Shai Calev, Tel Aviv, ISRAEL; Simeon Cloud, San Jose, CA; Solent University, Southampton, UNITED KINGDOM; Solvatio AG, Rimpar, GERMANY; Srivari Incorporated DBA Viswambara Software Systems, Bellevue, WA; STS Arabia, Amman, JORDAN; Sudo Technology Co. LTD, Beijing, PEOPLE'S REPUBLIC OF CHINA; Tallence AG, Hamburg, GERMANY; TAWAL, Riyadh, SAUDI ARABIA; Teliolabs Communication Private Limited, Hyderbad, INDIA; Totogi LLC., Wilmington, DE; Unified National Networks Sdn Bhd, Anggerek Desa, BRUNEI; University College Dublin, Dublin, IRELAND; Vantage Towers, Dusseldorf, GERMANY; Vietnam Digital Transformation Ecosystem, Ha Noi, VIETNAM; VOCUS PTY LTD, Melbourne, AUSTRALIA; VoltDB, Inc., Bedford, MA; WideOpenWest, Inc., Englewood, CO; Zhongguancun IQ Alliance for Software Services Industry, Beijing, PEOPLE'S REPUBLIC OF CHINA;

Also, the following members have changed their names: Swim.it Inc., Swim, Campbell, CA; BearingPoint Limited, Beyond by BearingPoint, London, UNITED KINGDOM; Hitss Consulting SA de CV, HITSS SOLUTIONS, S.A. DE C.V., Mexico City, MEXICO; SSE Enterprise Limited, NEOS NETWORKS, Reading, UNITED KINGDOM; AsiaInfo Technologies Limited, AsiaInfo Technologies (China) Co. Ltd., Hong Kong, HONG KONG–CHINA;

In addition, the following parties have withdrawn as parties to this venture: Asia Pacific College, Maynila, PHILIPPINES; Athlone Institute of Technology, Athlone, IRELAND; AZR for informatics & media solutions L.L.C., Tripoli, LIBYA; BBFA Ltd., Shrewton, UNITED KINGDOM; Beijing Tianyuan DIC Information Technology Co. Ltd., Beijing, PEOPLE'S REPUBLIC OF CHINA; Billing College, Teaneck, NJ; Celona Technologies, Cupertino, CA; Center for Emerging Sciences, Engineering & Technology (CESET), Islamabad, PAKISTAN; Concentra Consulting Limited, London, UNITED KINGDOM; Corvinus University of Economic Sciences, Budapest, HUNGARY; de Brenni Executive Consulting Services, Adelaide, AUSTRALIA; Department of Computer and Systems Sciences, DSV, Stockholm University, Kista, SWEDEN; DIT–UPM, Madrid, SPAIN; Electron Bridge, Noida, INDIA; EVERIS SPAIN SLU, Madrid, SPAIN; Facultad Regional Buenos Aires, Universidad Tecnologica Nacional, Buenos Aires, ARGENTINA; Federal University of Espirito Santo, Espirito Santo, BRAZIL; Federal University of Paraná, Paraná, BRAZIL; Fraunhofer-Institute for Algorithms and Scientific Computing (SCAI), Sankt Augustin, GERMANY; FTTH Council Asia-Pacific, Singapore, SINGAPORE; Fundação Getulio Vargas São Paulo, São Paulo, BRAZIL; GDX, Johannesburg, SOUTH AFRICA; GLOBEOSS, Selangor, MALAYSIA; Gradiant, Vigo, SPAIN; HEC Lausanne, University of Lausanne, Lausanne, SWITZERLAND; Istanbul Bilgi University, Istanbul, TURKEY; Kyivstar JSC, Kyiv, UKRAINE; Kyushu University, Faculty of Economics, Fukuoka, JAPAN; Ladoke Akintola University of Technology, Ogbomosho, NIGERIA; LE SAVOIR–FAIRE ITIL, Yaounde, CAMEROON; London School of Economics, LSE Network Economy Forum, London, UNITED KINGDOM; Lumen, Monroe, LA; Mageda, Sao Paulo, BRAZIL; Mauritius Telecom, Port Louis, MAURITIUS; MDC (Management and Development Company), Beirut, LEBANON; Microtest Education Center, Moscow, RUSSIA; Neptune Consulting, Eastern Cape, SOUTH AFRICA; Network Technical Authority, UK MoD, Corsham, UNITED KINGDOM; North State Telephone Company d.b.a. NorthState, A North Carolina corporation, High Point, NC; NS Solutions USA Corporation, San Mateo, CA; OFFIS e.V., Oldenburg, GERMANY; OneWeb, London, UNITED KINGDOM; Pak Telecom Mobile Limited, Islamabad, PAKISTAN; Panorama Software (Europe) Ltd, Hertfordshire, UNITED KINGDOM; PiA–TEAM INC., Bellevue, WA; Post and Telecommunication Institute of Technology, Ha Noi City, VIETNAM; PromonLogicalis Tecnologia E Participacoes Ltda., Sao Paulo, BRAZIL; PT Telekomunikasi Selular, Jakarta, INDONESIA; RASHA COMMUNICATIONS DEVELOPMENT LTD, London, UNITED KINGDOM; Sedicii Innovations Limited, Waterford, IRELAND; Shelter, London, UNITED KINGDOM; Singer TC GmbH, Schwedeneck, GERMANY; Splunk, San Francisco, CA; St. Petersburg College, St. Petersburg, FL; Stratecast|Frost & Sullivan, Chico, CA; Sybica, Burlington, CANADA; Symbiosis Institute of Digital and Telecom Management, Pune, INDIA; Syntologica, Half Moon Bay, CA; Telekom Slovenije, Ljubljana, SLOVENIA; Telkom University, Bandung, INDONESIA; Telsy Spa, Piemonte, ITALY; Texas Tech University High Performance Computing Center, Lubbock, TX; The University of San Francisco, San Francisco, CA; The University of Tokyo, Tokyo, JAPAN; UCS GLOBAL TECHNOLOGIES PVT LTD, Srinagar, INDIA; Universidad Politecnico de Madrid, Facultad de Informática, Ontology Engineering Group, Madrid, SPAIN; Universidad Pública de Navarra—School of Engineering, Pamplona, SPAIN; Università di Napoli Federico II—Dipartimento di Informatica e Sistemistica, Naples, ITALY; Université de Rennes 1—Laboratoire de recherche IRISA, Rennes, FRANCE; University of California, Office of the President, Oakland, CA; University of Ljubljana, Faculty of Computer and Information Science, Ljubljana, SLOVENIA; University of Michigan Institute for Social Research, Communications Studies, Ann Arbor, MI; University of the Highlands and Islands, Inverness, UNITED KINGDOM; University of York Communications Research Group, Heslington, UNITED

KINGDOM; Vertical Systems Group, Norwood, MA; Zurich University of Applied Sciences, Zurich, SWITZERLAND;

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open and TM Forum intends to file additional written notifications disclosing all changes in membership.

On October 21, 1988, TM Forum filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 8, 1988 (53 FR 49615).

The last notification was filed with the Department on May 3, 2021. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 25, 2021 (86 FR 28150).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2021–25700 Filed 11–23–21; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—The Institute of Electrical and Electronics Engineers, Inc.

Notice is hereby given that, on October 14, 2021, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), The Institute of Electrical and Electronics Engineers, Inc. (''IEEE'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, 32 new standards have been initiated and 16 existing standards are being revised. More detail regarding these changes can be found at: *https://standards.ieee.org/about/sasb/sba/sep2021.html*.

The following pre-standards activities associated with IEEE Industry Connections Activities were launched or renewed: *https://standards.ieee.org/about/bog/smdc/september2021.html.*

On September 17, 2004, IEEE filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 3, 2004 (69 FR 64105).

The last notification was filed with the Department on May 25, 2021. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on July 26, 2021 (86 FR 40079).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2021–25695 Filed 11–23–21; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to The National Cooperative Research and Production Act of 1993—Digital Manufacturing Design Innovation Institute

Notice is hereby given that, on October 1, 2021, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Digital Manufacturing Design Innovation Institute (''DMDII'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Massachusetts Institute of Technology (MIT), Cambridge, MA; Computer Bay, Schererville, IL; Th3rd Coast Digital Solutions, Grand Haven, MI; OmniQuest, Novi, MI; Texas A&M University, College Station, TX; Tredence, San Jose, CA; Kinta AI, San Francisco, CA; Ant Robotics, Chicago, IL; OptTek Systems, Inc., Boulder, CO; Endpoint Security Inc., College Station, TX; CYNALTICA, Arlington, VA; Oshkosh Corporation, Oshkosk, WI; Penn State University, University Park, PA; Chooch Intelligence Technologies, San Mateo, CA; Simio, Sewickly, PA; Aristi Technologies, Herndon, VA; Qubit Networks, LLC, LaPorte, IN; North American Meat Institute, Washington, DC; and Quad City Manufacturing Laboratory, Rock Island, IL, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and DMDII intends to file additional written notifications disclosing all changes in membership.

On January 5, 2016, DMDII filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 9, 2016 (81 FR 12525).

The last notification was filed with the Department on June 30, 2021. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on August 23, 2021 (86 FR 47156).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2021–25692 Filed 11–23–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—OpenJS Foundation

Notice is hereby given that, on October 5, 2021, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), OpenJS Foundation has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Coinbase, San Francisco, CA; and American Express Banking Corp., New York, NY, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and OpenJS Foundation intends to file additional written notifications disclosing all changes in membership.

On August 17, 2015, OpenJS Foundation filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 28, 2015 (80 FR 58297).

The last notification was filed with the Department on July 9, 2021. A notice was published in the **Federal**

Register pursuant to Section 6(b) of the Act on August 23, 2021 (86 FR 47154).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2021–25658 Filed 11–23–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cooperative Research Group on Advanced Fluids for Electrified Vehicles

Notice is hereby given that, on October 12, 2021, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Cooperative Research Group on Advanced Fluids for Electrified Vehicles (''AFEV'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in membership. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Fuchs Lubricants Co., Harvey, IL; TotalEnergies Marketing Service, Solaize, FRANCE; and Toyota Motor Corporation, Aichi, JAPAN, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and AFEV intends to file additional written notifications disclosing all changes in membership.

On June 16, 2021, AFEV filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on August 16, 2021 (86 FR 45751).

The last notification was filed with the Department on August 18, 2021. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on October 5, 2021 (86 FR 55001).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2021–25711 Filed 11–23–21; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Medical CBRN Defense Consortium

Notice is hereby given that, on September 30, 2021, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Medical CBRN Defense Consortium (''MCDC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Arete Associates, Northridge, CA; Cornerstone Research Group, Miamisburg, OH; Design West Technologies, Tustin, CA; eSpin Technologies, Inc., Chattanooga, TN; First Line Technology LLC, Chantilly, VA; Hermtac LLC, Dallas, TX; Integrated Solutions for Systems, Huntsville, AL; ITL LLC dba ITL Solutions, Hampton, VA; Kuprion, Inc., San Jose, CA; Lynntech, Inc., College Station, TX; Materials Modification, Inc., Fairfax, VA and Microsoft Corporation, Redmond, WA have been added as parties to this venture.

Also, Adjuvance Technologies, Inc., Lincolc, NE; and Applied Nanotech, Inc., Austin, TX; Aradigm Corporation; Neward, CA; BioSAFE Engineering LLC, Indianapolis, IN; Equivital, Inc., New York, NY; EWI, Columbus, OH; Fast Track Drugs and Biologics LLC, Poolesville, MD; SINTX Technologies, Inc., Salt Lake City, UT; Somnio Global LLC, Novi, MI and Visionary Products, Inc., Draper, UT have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and MCDC intends to file additional written notifications disclosing all changes in membership.

On November 13, 2015, MCDC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on January 6, 2016 (81 FR 513).

The last notification was filed with the Department on July 1, 2021. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on August 16, 2021 (86 FR 45750).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2021–25689 Filed 11–23–21; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Fire Protection Association

Notice is hereby given that, on October 15, 2021, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), National Fire Protection Association (''NFPA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, NFPA has provided an updated and current list of its standards development activities, related technical committee and conformity assessment activities. Information concerning NFPA regulations, technical committees, current standards, standards development and conformity assessment activities are publicly available at *nfpa.org.*

On September 20, 2004, NFPA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on October 21, 2004 (69 FR 61869).

The last notification was filed with the Department on July 26, 2021. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on August 23, 2021 (86 FR 47151).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2021–25694 Filed 11–23–21; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Utility Broadband Alliance, Inc.

Notice is hereby given that, on October 20, 2021, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Utility Broadband Alliance, Inc. (''UBA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Exelon/Pepco Holdings, Neward, DE; Alliant Energy, Madison, WI; Cyient, Telangaga; INDIA; West Monroe Partners, Chicago, IL; Sitenna, Claymont, DE; Recptyv, San Diego, CA; Qualcomm, San Diego, CA; Q-net Security, St Louis, MO; Crown Castle, Canonsburg, PA; have joined as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and UBA intends to file additional written notifications disclosing all changes in membership.

On May 4, 2021, UBA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 10, 2021 (86 FR 30981).

The last notification was filed with the Department on July 26, 2021. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on August 23, 2021 (86 FR 47151).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2021–25705 Filed 11–23–21; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to The National Cooperative Research and Production Act of 1993—Maritime Sustainment and Technology Innovation Consortium

Notice is hereby given that, on October 11, 2021, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Maritime Sustainment and Technology Innovation Consortium (''MSTIC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, 11 Cyber Services LLC, Mt Pleasant, SC; A.T. Kearney Public Sector and Defense Services LLC, Arlington, VA; Ace Electronics Defense Systems LLC, Aberdeen Proving Ground, MD; Adaptive Intelligence Corporation, Banks, OR; Advanced Systems Supportability Engineering Technologies and Tools (ASSETT, Inc.), Manassas, VA; Aerojet Rocketdyne Inc., Huntsville, AL; Alluvionic, Inc., Melbourne, FL; American Bureau of Shipping (ABS), Spring, TX; American Defense International, Washington, DC; and American Superconductor (AMSC), Ayer, MA; American Systems Corporation, Chantilly, VA; ANDRO Computational Solutions LLC, Rome, NY; Applied Engineering Concepts, Inc., Eldersburg, MD; Applied Physical Sciences Corporation, Groton, CT; Applied Research in Acoustic LLC, Washington, DC; Aptima, Inc., Woburn, MA; Ashwin-Ushas Corporation, Holmdel, NJ; Attila Security, Columbia, MD; BAE Systems, Merrimack, NH; Barber-Nichols, LLC, Arvada, CO; Beast Code LLC, Fort Walton Beach, FL; BH Technology LLC, Pamona, NY; Bigelow Family Holdings LLC dba Mettle Ops, Sterling Heights, MI; BMORE VIRTUAL LLC dba Balti Virtual, Baltimore, MD; BMT Designers & Planners, Arlington, VA; Booz Allen Hamilton Inc., McLean, VA; Bowhead Turnkey Manufacturing, Plano, TX; C Z and Associates, Inc., Blacksburg, VA; Cape Henry Associates, Inc., Virginia Beach, VA; Cardinal Engineering LLC, Washington, DC; Cervello Technologies LLC, Safety Harbor, FL; Cisco Systems, San Jose, CA; Clinkenbeard & Associates, Inc., South Beloit, IL; CodeMettle, LLC, Atlanta, GA; CogniTech Corporation, Salt Lake City, UT; Colorado Engineering, Inc., Colorado Springs, CO; Colvin Run Networks, Inc., Leesburg, VA; Concurrent Technologies Corporation, Johnstown, PA; Creare LLC, Hanover, NH; D&K Engineering, San Diego, CA; Dark Wolf Solutions LLC, Herndon, VA; DataCrunch Lab, LLC, Cary, NC; Dell, Round Rock, TX; Delphinus Engineering, Inc., Eddystone, PA; Design Interactive, Inc., Orlando, FL; DMS South, Lancaster, TX; Dragonfly Pictures, Inc., Essington, PA; Drexel University, Philadelphia, PA; DRS Laurel Technologies Naval Electronics, Johnstown, PA; DY4, Inc. dba Curtiss-Wright Defense Solutions, Ashburn, VA; EC America, Inc., McLean, VA; DO Western, Salt Lake City, UT; EHS Technologies Corporation, Moorestown, NJ; ElectraWatch, A Company of Austal USA, Charlottesville, VA; Epsilon Systems Solutions, Inc., San Diego, CA; Ernst & Young LLP, New York, NY; Exlar Corp, dba Curtiss-Wright Corporation, Chanhassen, MN; Fabrisonic LLC, Columbus, OH; Fairbanks Morse Defense, Beloit, WI; Florida State University Center for Advanced Power Systems, Tallahassee, FL; General Atomics Electromagnetic Systems, San Diego, CA; General Dynamics Mission Systems, Inc., Fairfax, VA; General Dynamics Ordnance and Tactical Systems, Inc., St. Petersburg, FL; General Technical Services LLC, Wall Township, NJ; General Tool Company, Cincinnati, OH; George Consulting, Ltd., Charleston, SC; GIRD Systems, Inc., Cincinnati, OH; Global Circuit Innovations, Colorado Springs, CO; GLX Power Systems Inc., Cleveland, OH; Granite State Manufacturing, Manchester, NH; Green Expert Technology, Inc., Haddonfield, NJ; Gryphon Technologies, Washington, DC; GSD LLC, Williamsburg, VA; Guide Star Engineering LLC, Kapolei, HI; Guidehouse LLP, Falls Church, VA; GuidePoint Security, Herndon, VA; Hepburn and Sons LLC, Manassas, VA; Herdt Consulting, Inc., Chelsea, AL; Hewlett Packard Enterprise Company, Reston, VA; Hexagon US Federal, Inc., Chantilly, VA; HII Fleet Support Group LLC, Virginia Beach, VA; Huckworthy LLC, Washington, DC; Huntington Ingalls Industries, Inc., Newport News, VA; Hydrasearch Company LLC, Stevensville, MD; IDENTIFY3D, Inc., San Francisco, CA; II–VI Aerospace & Defense, Murrieta, CA; In-Depth Engineering Corporation, Fairfax, VA; Integer Technologies LLC, Columbia, SC; International Business Machines (IBM), Bethesda, MD; International TechneGroup Incorporated, Milford, OH; ITA International LLC, Newport News, VA; ITL LLC, Hampton, VA; JC3 LLC, Rockbridge Baths, VA; JF Taylor, Inc., Lexington Park, MD; Juno Technologies, Inc., Rancho Santa Fe, CA; Kern Technology Group LLC, Virginia Beach, VA; Keysight Technologies, Colorado Springs, CO; KIHOMAC, Inc., Reston, VA; KPMG LLP, McLean, VA; L3 Technologies, Inc.

Communication Systems—East, Camden, NJ; L3 Unidyne, Inc., Norfolk, VA; La Jolla Logic, Inc., San Diego, CA; Leidos, Reston, VA; Leonardo DRS Naval Power Systems, Milwaukee, WI; LeWiz Communications, Inc., San Jose, CA; Life Cycle Engineering, Inc., North Charleston, SC; LMI Consulting LLC, Tysons, VA; Lockheed Martin Corporation—Missiles and Fire Control, Orlando, FL; Logistic Services International, Inc., Jacksonville, FL; Main Sail LLC, Chesterland, OH; Makai Ocean Engineering, Inc., Waimanalo, HI; Maritime Applied Physics Corporation, Baltimore, MD; Maritime Planning Associates, Newport, RI; McCormick Stevenson Corporation, Clearwater, FL; McKean Defense Group LLC, Philadelphia, PA; Mercury Systems, Inc., Andover, MA; Metal Improvement Company LLC dba Para Tech Coating, Laguna Hills, CA; MI Technical Solutions, Chesapeake, VA; Micro Focus Government Solutions LLC, Vienna, VA; Mide Technology Corporation, Woburn, MA; Motorola Solutions, Linthicum Heights, VA; NAG LLC, Norfolk, VA; NanoVMs, Inc., San Francisco, CA; NASCENTechnology Manufacturing, Inc., Watertown, SD; NCI Information Systems, Inc., Reston, VA; NDI Engineering Company, Thorofare, NJ; NetApp US Public Sector Inc., Vienna, VA; New Mexico Institute of Mining and Technology, Socorro, NM; nGAP, Inc., Bonsall, CA; Northrop Grumman Mission Systems, Linthicum, MD; Nova Power Solutions, Inc., Sterling, VA; NTA, Inc., Camden, AR; NTS Technical Systems, Camden, AR; NuWave Solutions LLC, McLean, VA; Oceaneering International, Inc., Hanover, MD; Oceanetics, Inc., Annapolis, MD; Open Source Systems LLC, Suwanee, GA; Opto-Knowledge Systems, Inc., Torrance, CA; Orbis Sibro, Inc., Charleston, SC; Orbital Research, Inc., Cleveland, OH; Parts Life, Inc., Moorestown, NJ; Peregrine Technical Solutions LLC, Yorktown, VA; Persistent Systems LLC, New York, NY; Perspecta Labs, Basking Ridge, NJ; Pinnacle Solutions, Inc., Huntsville, AL; Polaris Sensor Technologies, Huntsville, AL; Precision Custom Components, York, PA; Progeny Systems Corporation, Manassas, VA; Prometheus Inc., Sharon, MA; PURVIS Systems Incorporated, Middletown, RI; QED Systems, Inc., Virginia Beach, VA; QinetiQ, Inc., Lorton, VA; R Squared Solutions LLC, Chesapeake, VA; Redfish Trading LLC, San Antonio, TX; ReLogic Research, Huntsville, AL; Research Innovations Incorporated, Alexandria, VA; Rhoads Industries, Inc., Philadelphia, PA; Robbins-Gioia LLC, Alexandria, VA; RWC LLC, Annapolis, MD; Sabre Systems, Inc., Warrington, PA; Science Application International Corporation, Reston, VA; ERCO, Inc., Herndon, VA; Siemens Energy, Inc., Alpharetta, GA; SitScape, Inc., Vienna, VA; SOLUTE, Inc., San Diego, CA; Smart Information Flow Technologies dba SIFT, Minneapolis, MN; Sonalysts, Inc., Waterford, CT; Southeastern Computer Consultants, Inc., King George, VA; Southwest Research Institute, San Antonio, TX; Specialty Systems, Inc., Toms River, NJ; Stottler Henke Associates, Inc., San Mateo, CA; SURVICE Engineering Company LLC, Belcamp, MD; Systima Technologies, Inc., Kirkland, WA; TDI Technologies, Inc., King of Prussia, PA; Tech Resources, Inc., Milford, NH; Technical Systems Integrators, Inc., Longwood, FL; Technology Advancement Group, Inc., Dulles, VA; Techtrend, Fairfax, VA; Temple Allen Industries, Rockville, MD; Texas Tech University, Lubbock, TX; The Charles Stark Draper Laboratory, Inc., Cambridge, MA; The Informatics Applications Group, Inc., Reston, VA; The Metamorphosis Group, Inc., Vienna, VA; The Pennsylvania State University, University Park, PA; TIME Systems LLC, Dumfries, VA; TPL, Inc., Albuquerque, NM; Transformational Security LLC, Columbia, MD; Trident Research LLC, Austin, TX; Tyto Government Solutions, Inc., Oakton, VA; Ultra Electronics Ocean Systems, Inc., Braintree, MA; University of Florida, Florida Applied Research in Engineering (FLARE), Gainesville, FL; Valkyrie Enterprises, Inc., Virginia Beach, VA; Vigor Marine LLC, Portland, OR; Visionary Product, Inc. dba VPI Technology Group, Draper, UT; W R Systems, Ltd., Fairfax, VA; Waltonen Engineering, Inc., Warren, MI; Welkins LLC, Downers Grove, IL; Wind Talker Innovations, Inc., Fife, WA; and XR 2 LEAD LLC, Dumfries, VA have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and MSTIC intends to file additional written notifications disclosing all changes in membership.

On October 21, 2020, MSTIC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 19, 2020 (85 FR 73750).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2021–25693 Filed 11–23–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Countering Weapons of Mass Destruction

Notice is hereby given that, on October 28, 2021, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Countering Weapons of Mass Destruction (''CWMD'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Asynchrony Solutions LLC, Saint Louis, MO; Cornerstone Research Group, Inc., Miamisburg, OH; Exponent, Inc., Menlo Park, CA; ManTech Advanced Systems International, Inc., Herndon, VA; Mantel Technologies, Tacoma, WA; Memsel, Inc., Haltom City, TX; Microsoft Corporation, Redmond, WA; Modern Intelligence, Inc., Austin, TX; Ocenco, Inc., Pleasant Prairie, WI; Radiation Detection Technologies, Manhattan, KS; Smart Sensing Solutions, San Pedro, CA; Strike Labs LLC, Fairfield, CT; Texas A&M Engineering Experiment Station, College Station, TX; and Trace-Ability, Inc., Van Nuys, CA have been added as parties to this venture.

Also, Cahaba Micro LLC, Pelham, AL; Gryphon Technologies, Arlington, VA; IMSAR LLC, Springville, UT; PathSensors, Inc., Baltimore, MD; The University of Texas at Dallas, Richardson, TX; and the University of Michigan, Ann Arbor, MI have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and CWMD intends to file additional written notifications disclosing all changes in membership.

On January 31, 2018, CWMD filed its original notification pursuant to Section

6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 12, 2018 (83 FR 10750).

The last notification was filed with the Department on July 1, 2021. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on August 23, 2021 (86 FR 47149).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2021–25707 Filed 11–23–21; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to The National Cooperative Research and Production Act Of 1993—Resilient Infrastructure + Secure Energy Consortium

Notice is hereby given that, on November 5, 2021, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the Resilient Infrastructure + Secure Energy Consortium (''RISE'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, 360 Network Solutions, Marietta, GA; ABM Nano LLC, Sugar Land, TX; Advanced Ceramic Fibers LLC, Idaho Falls, ID; Advanced Remote Sensing, Inc., Hartford, SD; Aequor, Inc., San Diego, CA; Aerojet Rocketdyne, Inc., Huntsville, AL; Akita Innovations LLC, North Billerica, MA; Alaska Applied Sciences, Inc., Juneau, AK; AlchLight LLC, Rochester, NY; ALD Technical Solutions, San Diego, CA; American Battery Solutions, Birmingham, MI; American Defense International, Washington, DC; American Ecotech, Warren, RI; Ampcontrol Technologies, Inc., New York, NY; Apex Clean Energy Holdings LLC, Charlottesville, VA; ARC Technology LLC, Whitewater, KS; Archaius LLC, Durham, NC; Ascent Solar Technologies, Inc., Thornton, CO; Aspen Hybrid Technology Solutions, Berthoud, CO; Atomic Electronic Weight Chips and Circuits, Inc., Brooklyn, NY; Atrevida Science, Amherst, NY; Autonodyne LLC, Boston, MA; AVO Multiamp Corp. dba SebaKMT dba Megger, Norristown, PA; Axion Technologies LLC, Bolingbrook, IL; Beyond Silicon, Inc., Chandler, AZ; Blitzz, Inc., Los Gatos, CA; Blueskytec America LLC, Charlotte, NC; Blyncsy, Salt Lake City, UT; BOSS Controls, Inc., Ligonier, PA; BWR Innovations LLC, Fargo, ND; C5BDI, Virginia Beach, VA; Caliola Engineering, Colorado Springs, CO; CAMX Power LLC, Lexington, MA; CarbonCycle LLC, Mansfield, MO; Christie Bell Incorporated, Belgrade, MT; CleanO2 Carbon Capture Technologies, Inc., Calgary, CANADA; Clemson University Research Foundation, Clemson, SC; Colorado Renewable Energy Society, Golden, CO; Colvin Run Networks, Inc., Leesburg, VA; Cornerstone Research Group, Inc., Miamisburg, OH; Critical Infrastructure Investments, Inc., Tucson, AZ; Crowley Government Solutions, Jacksonville, FL; Curiosity Lab at Peachtree Corners, Peachtree Corners, GA; Custom Electronics, Inc., Oneonta, NY; Cymbet Corporation, New Brighton, MN; deeptraffic—Traffic and Mobility Management Technologies P.C., Thessaloniki, GREECE; Deloitte Consulting LLP, Arlington, VA; Densec ID, Scottsdale, AZ; Disaster Tech, Alexandria, VA; Dynetics, Inc., Huntsville, AL; Eagle Mines Management, Salt Lake City, UT; EarthEn, Inc., Chandler, AZ; EastWest Enterprises LLC, Los Angeles, CA; Echogen Power Systems, Akron, OH; Element Environmental LLC, Aiea, HI; Elk Coast Institute, Point Arena, CA; EMPEQ, Ithaca, NY; Energy and Security Group, Reston, VA; Energy Systems Group, Newburgh, IN; EnergyLink3, Boyds, MD; EnergynTech, Inc., Lakewood, CO; Enersion, Inc., San Diego, CA; Epic Advanced Materials, Los Angeles, CA; ePropelled, Lowell, MA; Evolve Hydrogen, Inc., East Northport, NY; Exacter, Inc., Columbus, OH; Fend Incorporated, Arlington, VA; Flexodes, Inc., Sugar Land, TX; FLITE Material Sciences US, Inc., Somerville, MA; For Good Ventures, San Francisco, CA; FuseRing, London, CANADA; Gelion Technologies, Alexandria, AUSTRALIA; General Technical Services LLC, Wall Township, NJ; GEOKERI, Mexico City, MEXICO; Georgia Tech Research Institute, Smyrna, GA; Go Electric, Anderson, IN; Goodman Technologies LLC, Albuquerque, NM; Graphene Layers, North Brunswick, NJ; Great Lakes Crystal Technologies, East Lansing, MI; Greer Consulting LLC, Washington, DC; GridPlex Networks, West Chester, PA; GROW Oyster Reefs LLC, Charlottesville, VA; GS Research LLC, Bay St Louis, MS; Halovation LLC, Land O Lakes, FL; Hannon Armstrong, Annapolis, MD; Heat Inverse LLC, Ithaca, NY; Hitachi Americas, Ltd, Santa Clara, CA; Homeland Technologies LLC, Columbia, MO; Hydrobee SPC, Seattle, WA; infiniRel Corporation, Santa Cruz, CA; Institute for Smart, Secure and Connected Systems (ISSACS), Case Western Reserve University, Cleveland, OH; Intelligent Security Systems Corporation, Woodbridge, NJ; Intelligent Visioneering LLC, Nashua, NH; Inventev LLC, Detroit, MI; IoTAI, Inc., Fremont, CA; Johnson Research & Development Co., Inc., Atlanta, GA; Karagozian & Case, Inc., Glendale, CA; Katz Water Technologies, Houston, TX; Kinnami Software Corporation, State College, PA; Kris Deuar & Associates, Inc., Warrensburg, MO; KRyanCreative LLC, Mount Pleasant, SC; Lattice Industries, Inc., Wilmington, DE; Latticet, Reston, VA; LDS Technology Consultants, Inc., Corpus Christi, TX; Linc Research, Huntsville, AL; Los Alamos National Laboratory, Los Alamos, NM; Mack Defense LLC, Allentown, PA; Mainspring Energy, Inc., Menlo Park, CA; Mantel Technologies, Tacoma, WA; MassCEC, Boston, MA; Max Powers LLC, Brooklyn, NY; MC2 Energy Solutions, Inc., Los Angeles, CA; MDI B.V., Rotterdam, NETHERLANDS; MSBAI, Los Angeles, CA; NALA Systems, Inc., RTP, NC; Namatad, Inc., Tacoma, WA; NextEra Energy, Inc., Juno Beach, FL; NuTech LLC, Fort Washington, MD; Omnitek Partners LLC, Ronkonkoma, NY; Open Range Capital Partners LLC, Marietta, GA; Opterro, Inc., San Jose, CA; Optics11, Amsterdam, NETHERLANDS; Optowares, Woburn, MA; Osazda Energy, Albuquerque, NM; Paired Power, Campbell, CA; Peace Haven Corp, Ashburn, VA; Penn State University, University Park, PA; Perfecta, Springfield, VA; Peters Geosciences, Lakewood, CO; Phoenix Group of Virginia, Chesapeake, VA; Physical Sciences, Inc., Andover, MA; Picogrid, Hawthorne, CA; PlanIT Impact, Kansas City, MO; Polymaterials App LLC, Tampa, FL; Powdermet, Inc., Euclid, OH; Prisere LLC, Cranston, RI; Process Transformation Technologies—Laboratory of America LLC, Corvallis, OR; Quino Energy, Inc., Menlo Park, CA; RDA Technical Services, Fort Myers, FL; re:3D, Inc., Houston, TX; Reactwell LLC, New Orleans, LA; Redhorse Corporation, Arlington, VA; Regeneration.VC, Redondo Beach, CA; REGENT Craft, Inc., Burlington, MA; Resilient Power Works LLC, Hagerstown, MD; ResilienX, Inc., Syracuse, NY; Resolved Analytics, Durham, NC; Resonant Link, Shelburne, VT; Riverside Research Institute, Arlington, VA; Robert Bosch LLC,

Farmington Hills, MI; Rogante Engineering Office, Civitanova Marche, ITALY; Rogers Corporation, Chandler, AZ; RPI Group, Inc., Fredericksburg, VA; RUNWITHIT Synthetics, Inc., Sherwood Park, CANADA; Ryzing Technologies, Staunton, VA; Select Engineering Services, Layton, UT; Semper Fortis Solutions LLC dba Fornetix Federal, Frederick, MD; Sequentric Energy Systems LLC, Roswell, GA; Shoreline Computing, Sunnyvale, CA; Shower Stream, Austin, TX; Silpara Technologies, Decatur, GA; Siradel, Toronto, CANADA; Sisterm Thermal Systems, Campinas, BRAZIL; SkySpotter, Austin, TX; Smart Walls Construction, Buffalo, NY; Smart Yields, Honolulu, HI; Solar Roadways Incorporated, Sandpoint, ID; Solar Tonic LLC, Ypsilanti, MI; Solugen, Houston, TX; Sonalysts, Inc., Waterford, CT; Spectrum Comm, Inc., Newport News, VA; Steel Modular, Inc., Essex, CT; SurClean, Inc., Brownsburg, IN; Switched Source LLC, Chicago, IL; Sync, Inc., Birmingham, AL; Tecogen, Waltham, MA; Tenaska, Inc., Omaha, NE; TensTech, Inc., Matthews, NC; Tesseract Ventures, Overland Park, KS; Tetramer, Pendleton, SC; Texas A&M University, Galveston, TX; The Center for Green Materials Research at The State University of New Jersey, Piscataway, NJ; The Center for Simulation and Synthetic Humans at the University of Texas at Dallas, Richardson, TX; ThermaWatts LLC, Renton, WA; ThermoLift, Stony Brook, NY; Titan Power LLC, Temple Hills, MD; TRIDEC Services, Inc., Raleigh, NC; Tufts University, Medford, MA; Unison Energy LLC, Greenwich, CT; University of Colorado Boulder, Boulder, CO; University of Messina: Department of Mathematical and Computer Sciences, Physical Sciences, and Earth Sciences, Messina, ITALY; University of New Hampshire, Durham, NH; University of New South Wales, Kensington, AUSTRALIA; University of South Wales, Pontypridd, UNITED KINGDOM; University of Tennessee, Knoxville, TN; University Technical Services, Greenbelt, MD; Urban Electric Power, Inc., Pearl River, NY; VAST Power Systems, Inc., Chicago, IL; Velammal College of Engineering and Technology, Madurai, INDIA; Villanova University, Villanova, PA; Waiea Water Solutions LLC, Honolulu, HI; Whether, Inc., Stamford, CT; Xairos Systems, Inc., Lone Tree, CO; Xona Space Systems, San Mateo, CA; and XTRLs International, Inc., San Diego, CA, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and RISE intends to file additional written notifications disclosing all changes in membership.

On July 2, 2021, RISE filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on August 23, 2021 (86 FR 47155).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2021–25714 Filed 11–23–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Water Act

On November 18, 2021, the Department of Justice filed a Complaint under the Clean Water Act and lodged a proposed Consent Decree with the United States District Court for the District of Hawaii in the lawsuit entitled *United States of America* v. *JM Fisheries LLC et al.,* Civil Action No. 1:21–cv–00452.

The Complaint alleges that the defendants, San Diego, California-based JM Fisheries LLC and G.S. Fisheries Inc., company manager James Sousa, and chief engineer Edward DaCosta, are civilly liable for violations of Section 311 of the Clean Water Act, 33 U.S.C. 1321. The Complaint alleges that the companies and individuals are liable for violations related to the commercial fishing vessel *Capt. Vincent Gann* and operations in and around American Samoa. The Complaint addresses the discharge of oil, including oily bilge waste, into Pago Pago Harbor, American Samoa, in April 2018. The Complaint also includes Clean Water Act claims for violations of the Coast Guard's pollution control regulations related to the defendants' operation of the vessel.

Under the proposed Consent Decree, the companies and company manager James Sousa will pay $720,000 in civil penalties. The Consent Decree also requires these defendants to perform corrective measures on all vessels they own or operate. These measures include hiring an independent maritime consultant to conduct a top-to-bottom review of each vessel's oil handling practices and operations, training crewmembers on proper operation and maintenance of the oily water separator system and on the required recordkeeping associated with the system, documenting transfers of oil within and to each vessel, and submitting compliance reports to the Coast Guard and the Department of Justice. Through a separate stipulated settlement, the vessel's chief engineer, Edward DaCosta, will pay $5,000 in civil penalties based on a demonstrated limited ability to pay a higher penalty.

The penalties paid in this case will be deposited in the federal Oil Spill Liability Trust Fund managed by the National Pollution Funds Center.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States of America* v. *JM Fisheries LLC et al.,* D.J. Ref. No. 90–5–1–1–11245/1. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted by either email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the proposed Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $10.50 (25 cents per page reproduction cost) payable to the United States Treasury.

Lori Jonas,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2021–25654 Filed 11–23–21; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Oil Pollution Act

On November 17, 2021, the Department of Justice lodged a proposed consent decree with the United States District Court for the District of Montana

in the lawsuit entitled *United States et al.* v. *Bridger Pipeline LLC,* Civil Action No. 1:21–cv–00122–SPW–KLD.

The United States and the State of Montana filed this lawsuit against Bridger Pipeline LLC (''Bridger'') pursuant to the Oil Pollution Act, 33 U.S.C. 2701–2762, and state law. The United States and State of Montana's complaint seeks to recover damages for injury to, destruction of, loss of, or loss of use of natural resources resulting from the discharge of oil from Bridger's Poplar Pipeline into the Yellowstone River near Glendive, Montana in January 2015. The proposed consent decree requires Bridger to pay $2,000,000 to resolve the United States and the State of Montana's claim for natural resource damages arising from the discharge. Of this amount, $1,739,795 will be placed in a natural resource damages fund managed by the State of Montana and used for addressing injuries alleged in the complaint. Those harms include injuries to surface water, migratory birds and their supporting ecosystems, fish, including the pallid sturgeon, and associated riverine aquatic habitat, and human service losses. Restoration action alternatives will be evaluated and selected by federal and state natural resource damages trustees in a future restoration plan before the funds will be spent. The restoration plan will be subject to public comment. The remaining $260,205 portion of the settlement funds will be deposited in the U.S. Department of Interior Natural Resource Damage Assessment and Restoration Fund, as reimbursement for the United States natural resource damage assessment costs.

The publication of this notice opens a period for public comment on the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States et al.* v. *Bridger Pipeline LLC,* D.J. Ref. No. 90–5–1–1–11262/1. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail in the following manner:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the consent decree may be examined and downloaded at this Justice Department website: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $6.50 (25 cents per page reproduction cost) payable to the United States Treasury.

Jeffrey Sands,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2021–25606 Filed 11–23–21; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Diesel-Powered Equipment in Underground Coal Mines

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Mine Safety and Health Administration (MSHA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before December 27, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Nora Hernandez by telephone at 202–693–8633 or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: MSHA requires mine operators to provide important safety and health protections to underground coal miners who work on and around diesel-powered equipment. The engines powering diesel equipment are potential contributors to fires and explosion hazards in the confined environment of an underground coal mine where combustible coal dust and explosive methane gas are present. Diesel equipment operating in underground coal mines also can pose serious health risks to miners from exposure to diesel exhaust emissions, including diesel particulates, oxides of nitrogen, and carbon monoxide. Diesel exhaust is a lung carcinogen in animals.

This information collection includes maintenance and use of diesel equipment; tests and maintenance of fire suppression systems on both the equipment and at fueling stations; and exhaust gas sampling.

Records are required to document that essential testing and maintenance of diesel-powered equipment are conducted regularly by qualified persons; that corrective actions are taken; and the persons performing the maintenance, repairs, examinations, and tests are trained and qualified to perform such tasks.

Safety requirements for diesel equipment include many of the proven features required in existing standards for electric-powered mobile equipment, such as cabs or canopies, methane monitors, brakes and lights. Sampling of diesel exhaust emissions is required to protect miners from overexposure to carbon monoxide and nitrogen dioxide contained in diesel exhaust. Information collection requirements are found in: Section 75.1901(a), Diesel fuel requirements; section 75.1904(b)(4)(i), Underground diesel fuel tanks and safety cans; Section 75.1906(d), Transport of diesel fuel; section 75.1911(j), Fire suppression systems for diesel-powered equipment and fuel transportation units; section 75.1912(i), Fire suppression systems for permanent underground diesel fuel storage

facilities; sections 75.1914(f)(2), (g), (h)(1), and (h)(2), Maintenance of diesel-powered equipment; sections 75.1915(b)(5), (c)(1), and (c)(2), Training and qualification of persons working on diesel-powered equipment. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on June 16, 2021 (86 FR 32067).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–MSHA.

Title of Collection: Diesel-Powered Equipment in Underground Coal Mines.

OMB Control Number: 1219–0119.

Affected Public: Private Sector: Businesses or other for-profit institutions.

Total Estimated Number of Respondents: 126.

Total Estimated Number of Responses: 172,599.

Total Estimated Annual Time Burden: 14,002 hours.

Total Estimated Annual Other Costs Burden: $312,294.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: November 17, 2021.

Nora Hernandez,

Department Clearance Officer.

[FR Doc. 2021–25640 Filed 11–23–21; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Underground Retorts

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Mine Safety and Health Administration (MSHA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before December 27, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Nora Hernandez by telephone at 202–693–8633 or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 813, authorizes MSHA to collect information necessary to carry out its duty in protecting the safety and health of miners. Title 30 CFR 57.22401 sets forth the safety requirements for using a retort to extract oil from shale in underground metal and nonmetal I–A and I–B mines (those that operate in a combustible ore and either liberate methane or have the potential to liberate methane based on the history of the mine or the geological area in which the mine is located). At present, this applies only to underground oil shale mines. The standard requires that prior to ignition of underground retorts; mine operators must submit a written ignition operation plan to the appropriate Mine Safety and Health Administration (MSHA) District Manager which contains site-specific safeguards and safety procedures for the underground areas of the mine which are affected by the retorts. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on August 27, 2021 (86 FR 48250).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–MSHA.

Title of Collection: Underground Retorts.

OMB Control Number: 1219–0096.

Affected Public: Private Sector: Businesses or other for-profit institutions.

Total Estimated Number of Respondents: 1.

Total Estimated Number of Responses: 1.

Total Estimated Annual Time Burden: 160 hours.

Total Estimated Annual Other Costs Burden: $0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: November 17, 2021.

Nora Hernandez,

Department Clearance Officer.

[FR Doc. 2021–25641 Filed 11–23–21; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Refuge Alternatives for Underground Coal Mines

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Mine Safety and Health Administration (MSHA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for

review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before December 27, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Nora Hernandez by telephone at 202–693–8633 or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: Each underground coal mine has an emergency response plan and refuge alternative(s) that protect miners when escape from a mine during a mine emergency is not possible by providing secure spaces with isolated atmospheres that create life-sustaining environments. This ICR covers the refuge alternatives portion of emergency response plans and records for examination, maintenance and repair of refuge alternatives and components. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on July 6, 2021 (86 FR 35537).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–MSHA.

Title of Collection: Refuge Alternatives for Underground Coal Mines.

OMB Control Number: 1219–0146.

Affected Public: Private Sector: Businesses or other for-profits.

Total Estimated Number of Respondents: 3.

Total Estimated Number of Responses: 27.

Total Estimated Annual Time Burden: 73 hours.

Total Estimated Annual Other Costs Burden: $17.

Authority: 44 U.S.C. 3507(a)(1)(D).

Nora Hernandez,

Department Clearance Officer.

[FR Doc. 2021–25642 Filed 11–23–21; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Notification of Methane Detected in Underground Metal and Nonmetal Mine Atmospheres

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Mine Safety and Health Administration (MSHA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before December 27, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Nora Hernandez by telephone at 202–693–8633 or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: Title 30 CFR 57.22004(c) requires operators of underground M/NM mines to notify the MSHA as soon as possible if any of the following events occur: (a) There is an outburst that results in 0.25 percent or more methane in the mine atmosphere, (b) there is a blowout that results in 0.25 percent or more methane in the mine atmosphere, (c) there is an ignition of methane, or (d) air sample results indicate 0.25 percent or more methane in the mine atmosphere of a I–B, I–C, II–B, V–B, or Category VI mine. Under §§ 57.22239 and 57.22231, if methane reaches 2.0 percent in a Category IV mine or if methane reaches 0.25 percent in the mine atmosphere of a Subcategory I–B, II–B, V–B, or VI mine, MSHA shall be notified immediately. Although the standards do not specify how MSHA is to be notified, MSHA anticipates that the notifications would be made by telephone.

Title 30 CFR 57.22229 and 57.22230 require that the mine atmosphere be tested for methane and/or carbon dioxide at least once every seven days by a competent person or atmospheric monitoring system or a combination of both. Section 57.2229 applies to underground M/NM mines categorized as I–A, III, and V–A mines where the atmosphere is tested for both methane and carbon dioxide. Section 57.22230 applies to underground M/NM mines categorized as II–A mines where the atmosphere is tested for methane. Where examinations disclose hazardous conditions, affected miners must be informed. Title 30 CFR 57.22229(d) and 57.22230(c) require that the person performing the tests certify by signature and date that the tests have been conducted. Certifications of

examinations shall be kept for at least one year and made available to authorized representatives of the Secretary of Labor. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on June 10, 2021 (86 FR 30987).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–MSHA.

Title of Collection: Notification of Methane Detected in Underground Metal and Nonmetal Mine Atmospheres.

OMB Control Number: 1219–0103.

Affected Public: Private Sector: Businesses or other for-profits.

Total Estimated Number of Respondents: 6.

Total Estimated Number of Responses: 319.

Total Estimated Annual Time Burden: 28 hours.

Total Estimated Annual Other Costs Burden: $0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Nora Hernandez,

Department Clearance Officer.

[FR Doc. 2021–25639 Filed 11–23–21; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (21–082)]

NASA Advisory Council; Technology, Innovation and Engineering Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Technology, Innovation, and Engineering Committee of the NASA Advisory Council (NAC). This Committee reports to the NAC.

DATES: Tuesday, December 14, 2021, 11:00 a.m.–4:30 p.m., Eastern Time.

ADDRESSES: Meeting will be virtual only. See dial-in and Webex information below under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Green, Designated Federal Officer, Space Technology Mission Directorate, NASA Headquarters, Washington, DC 20546, via email at *g.m.green@nasa.gov* or (202) 358–4710.

SUPPLEMENTARY INFORMATION: As noted above, this meeting will be available by Webex or telephonically only. If dialing in via toll number, you must use a touch-tone phone to participate in this meeting. Any interested person may join via Webex at *https://nasaenterprise.webex.com/nasaenterprise/j.php?MTID=m5a03095a0d0cccb4873894c1e901502d,* the meeting number is 2760 169 7276, and the password is n@cTIE121421. The toll number to listen by phone is +1–415–527–5035. To avoid using the toll number, after joining the Webex meeting, select the audio connection option that says, ''Call Me'' and enter your phone number. If using the desktop or web app, check the ''Connect to audio without pressing 1 on my phone'' box to connect directly to the meeting.

Note: If dialing in, please mute your telephone. The agenda for the meeting includes the following topics:

—Space Technology Mission Directorate Update

—Office of Technology, Policy, and Strategy Update

—Perseverance Technology Demonstrations and Cryogenics Fluid Management ''Tipping Point'' Updates

—''Space Nuclear Propulsion for Human Mars Exploration'' Report Overview

—Early Stage Portfolio Updates

It is imperative that this meeting be held on this day to accommodate the scheduling priorities of the key participants.

Patricia Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2021–25684 Filed 11–23–21; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL CREDIT UNION ADMINISTRATION

[Docket No. NCUA–2021–0100]

Request for Comment Regarding National Credit Union Administration Draft Strategic Plan 2022–2026

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice; request for comments.

SUMMARY: The NCUA Board (Board) is requesting comment on its Draft Strategic Plan 2022–2026. The draft plan provides the agency's proposed strategic goals and objectives for the next five years. The draft plan summarizes an analysis of the internal and external environment impacting NCUA and evaluates the agency's programs and risks. The draft plan also includes examples of measures the agency can use to monitor performance, and strategies that describe how the agency will achieve its strategic goals and objectives. While the Board welcomes all comments from the public and stakeholders, it specifically invites comments and input on the proposed goals and objectives of the draft plan.

DATES: Comments must be received on or before January 24, 2022 to be assured of consideration.

ADDRESSES: You may submit comments by any of the following methods (Please send comments by one method only):

- *Federal eRulemaking Portal: http://www.regulations.gov/.* The docket number for this notice is NCUA–2021–0100. Go to *www.regulations.gov.* Enter ''Docket ID NCUA–2021–0100'' in the Search Box and click ''Search.'' Click on ''Comment Now'' to submit public comments. Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov*, including instructions for submitting public comments.
- *Fax:* (703) 518–6319. Include your name and the following subject line: ''Comments on NCUA 2018–2022 Draft Strategic Plan.''
- *Mail:* Address to Melane Conyers-Ausbrooks, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mail address.

Public Inspection: All public comments are available on the Federal eRulemaking Portal at: *http://www.regulations.gov/* as submitted, except as may not be possible for technical reasons. Public comments will not be edited to remove any identifying or contact information. Due to social

distancing guidelines, the usual opportunity to inspect paper copies of comments in the NCUA's law library is not currently available. After social distancing measures are relaxed, visitors may make an appointment to review paper copies by calling (703) 518–6540 or emailing *boardcomments@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Lindsey Courage, Management Analyst, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428 or telephone: (703) 518–6386.

SUPPLEMENTARY INFORMATION: The Government Performance and Results Act of 1993 (GPRA) requires agencies to prepare strategic plans, annual performance plans, and annual performance reports with measurable performance indicators to address the policy, budgeting and oversight needs of both Congress and agency leaders, partners/stakeholders, and program managers. In 2010, Congress passed the GPRA Modernization Act of 2010, which further requires a leadership-driven governance model with emphasis on quarterly performance reviews and transparency. The GPRA Modernization Act requires agencies to set priority goals linked to longer-term agency strategic goals. Part 6 of Office of Management and Budget (OMB) Circular A–11 provides additional guidance and requirements for federal agencies to implement these laws. The NCUA Draft Strategic Plan 2022–2026 is issued pursuant to the GPRA, the GPRA Modernization Act, and OMB Circular A–11.

The NCUA Draft Strategic Plan 2022–2026 outlines how the agency will continue to effectively supervise and insure a growing and evolving credit union system. As the financial services and the credit union sector evolve, the NCUA must be responsive. The NCUA Draft Strategic Plan 2022–2026 aims to be forward-looking and address the risks and opportunities facing the agency and the credit union system over the next five years. The agency is seeking comment on all aspects of the draft plan, with particular emphasis on the draft strategic goals and strategic objectives. The NCUA Board will analyze the comments received and determine whether to update the draft plan. Comments received may also be considered during development of the agency's Annual Performance Plans during the strategic plan period, as applicable. Approval of the proposed final NCUA Strategic Plan 2022–2026 will require a vote of the NCUA Board.

By providing opportunity for public comment on the NCUA Draft Strategic Plan 2022–2026, as well as by posting it on the agency's website at *www.ncua.gov,* the NCUA continues its ongoing commitment to transparency about the agency's future plans and actions.

The NCUA Draft Strategic Plan 2022–2026 is available at the following Web address: *https://www.ncua.gov/files/agenda-items/AG20211118Item2b.pdf.*

Authority: 5 U.S.C. 306.

By the National Credit Union Administration Board on November 18, 2021.

Melane Conyers-Ausbrooks,

Secretary of the Board.

[FR Doc. 2021–25633 Filed 11–23–21; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Federal Council on the Arts and the Humanities

Arts and Artifacts Indemnity Panel Advisory Committee

AGENCY: National Endowment for the Humanities

ACTION: Notice of charter renewal for Arts and Artifacts Indemnity Panel advisory committee.

SUMMARY: Pursuant to the Federal Advisory Committee Act and its implementing regulations, the Federal Council on the Arts and the Humanities (the Council) gives notice that the Charter for the Arts and Artifacts Indemnity Panel advisory committee was renewed for an additional two-year period on November 19, 2021. The Council determined that renewing the advisory committee is in the public interest in connection with the duties imposed on the Council by the Arts and Artifacts Indemnity Act, as amended.

FOR FURTHER INFORMATION CONTACT: Elizabeth Voyatzis, Committee Management Officer, 400 Seventh Street SW, Washington, DC 20506. Telephone: (202) 606–8322, facsimile (202) 606–8600, or email at *gencounsel@neh.gov.* Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the National Endowment for the Humanities' TDD terminal at (202) 606–8282.

Dated: November 19, 2021.

Samuel Roth,

Attorney-Advisor, National Endowment for the Humanities.

[FR Doc. 2021–25653 Filed 11–23–21; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel Advisory Committee

AGENCY: National Endowment for the Humanities.

ACTION: Notice of charter renewal for Humanities Panel advisory committee.

SUMMARY: Pursuant to the Federal Advisory Committee Act and its implementing regulations, the National Endowment for the Humanities (NEH) gives notice that the Charter for the Humanities Panel advisory committee was renewed for an additional two-year period on November 19, 2021. The Chairperson of NEH determined that the renewal of the Humanities Panel is necessary and in the public interest in connection with the performance of duties imposed upon the Chairperson of NEH by the National Foundation on the Arts and the Humanities Act of 1965, as amended.

FOR FURTHER INFORMATION CONTACT: Elizabeth Voyatzis, Committee Management Officer, 400 Seventh Street SW, Washington, DC 20506. Telephone: (202) 606–8322, facsimile (202) 606–8600, or email at *gencounsel@neh.gov.* Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the National Endowment for the Humanities' TDD terminal at (202) 606–8282.

Dated: November 19, 2021.

Samuel Roth,

Attorney-Advisor, National Endowment for the Humanities.

[FR Doc. 2021–25652 Filed 11–23–21; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting

The National Science Board's Committee on National Science and Engineering Policy hereby gives notice of the scheduling of a teleconference for the transaction of National Science Board business as follows:

TIME AND DATE: Monday, November 29, 2021, from 4:30—5:30 p.m. EST.

PLACE: This meeting will be held by teleconference through the National Science Foundation.

STATUS: Open

MATTERS TO BE CONSIDERED: The agenda of the teleconference is: Chair's opening remarks; update on Science & Engineering Indicators 2022 reports; update on plans for statutory delivery and public rollout of Indicators 2022;

discussion of Board policy messages companion piece accompanying Indicators; discussion of additional Board policy products.

CONTACT PERSON FOR MORE INFORMATION: Point of contact for this meeting is: Chris Blair, *cblair@nsf.gov,* 703/292–7000. To listen to this teleconference, members of the public must send an email to *nationalsciencebrd@nsf.gov* at least 24 hours prior to the teleconference. The National Science Board Office will send requesters a toll-free dial-in number. Meeting information and updates may be found at the National Science Board website *www.nsf.gov/nsb.*

Chris Blair,

Executive Assistant to the National Science Board Office.

[FR Doc. 2021–25807 Filed 11–22–21; 4:15 pm]

BILLING CODE 7555–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Office of the Managing Director: Strategic Management Program, Fiscal Year 2022–2026 Strategic Plan

AGENCY: National Transportation Safety Board.

ACTION: Notice: request for comments.

SUMMARY: This notice is in accordance with OMB Circular A–11, section 210.3 (b), Consultation and Outreach, which requires the NTSB to solicit comments on the proposed strategic plan to be published by February 2022. All interested parties are invited to submit comments regarding this proposed strategic plan. As background, the NTSB's 2020–2024 strategic plan was published in December 2019. This proposed document updates that plan, incorporating revised and expanded goals and objectives for the continuation of the 2020–2024 plan. We continued evaluating baseline performance metrics for the three goals. Some goals have been adjusted to reflect results from the previous plan's activities. These expanded strategic objectives help measure the agency's overall success. You can view a copy of the draft strategic plan on the NTSB website at: Strategic Plans & Reports (*ntsb.gov*) *https://www.ntsb.gov/about/reports/Documents/Draft-FY-22-26-Strategic-Plan-FedReg.pdf.*

DATES: Parties should submit comments on or before December 7, 2021.

ADDRESSES: Submit electronic comments to *strategicplan@ntsb.gov* or at *http://regulations.gov.* Submit written comments by regular mail to the National Transportation Safety Board, 490 L'Enfant Plaza SW, Washington, DC 20594. Attn: MD–1, Strategic Initiatives.

FOR FURTHER INFORMATION, CONTACT: John DeLisi, Senior Advisor for Policy and Strategic Initiatives, National Transportation Safety Board, 490 L'Enfant Plaza SW, MD–1, Washington, DC 20594, 202–314–6000.

Jennifer Homendy,

Chair.

[FR Doc. 2021–25587 Filed 11–23–21; 8:45 am]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50–528, STN 50–529, and 72–44; NRC–2021–0126]

In the Matter of Arizona Public Service Company, Salt River Project Agricultural Improvement and Power District Public Service Company of New Mexico, Palo Verde Nuclear Generating Station, Units 1 and 2 and Independent Spent Fuel Storage Installation

AGENCY: Nuclear Regulatory Commission.

ACTION: Transfers of control of licenses; corrected order.

SUMMARY: On October 21, 2021, and published in the **Federal Register** on October 27, 2021, the U.S. Nuclear Regulatory Commission (NRC) issued an Order approving the application dated May 19, 2021, as supplemented by letter dated September 14, 2021, filed by Arizona Public Service Company (APS), on behalf of Salt River Project Agricultural Improvement and Power District (SRP) and Public Service Company of New Mexico (PNM). The application sought NRC consent to the partial transfers of Renewed Facility Operating License Nos. NPF–41 and NPF–51 for Palo Verde Nuclear Generating Station (Palo Verde), Units 1 and 2, respectively, and the general license for the Palo Verde Independent Spent Fuel Storage Installation (ISFSI). Specifically, it sought NRC consent to the transfers from PNM to SRP of a 7.9333330 percent share of the undivided interests in Palo Verde, Unit 1, and of a 0.7933333 percent share of the undivided interests in Palo Verde Unit 2. No physical changes or operational changes were proposed in the application. The NRC is issuing an Order correcting and superseding the Order of October 21, 2021.

DATES: The corrected Order was issued on November 17, 2021.

ADDRESSES: Please refer to Docket ID NRC–2021–0126 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0126. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–287–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The corrected license transfer order dated November 17, 2021, the superseded license transfer order dated October 21, 2021, and published in the **Federal Register** on October 27, 2021 (86 FR 59432), and the NRC staff safety evaluation supporting the orders are available in ADAMS under Accession Nos. ML21307A132, ML21245A065, and ML21245A064, respectively.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Siva P. Lingam, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1564, email: *Siva.Lingam@nrc.gov.*

SUPPLEMENTARY INFORMATION: The text of the corrected Order is attached.

Dated: November 18, 2021.

For the Nuclear Regulatory Commission.

Siva P. Lingam,

Project Manager, Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

Attachment—Corrected Order Approving Transfers of Control of Licenses (Superseding Order of October 21, 2021)

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

In the Matter of: Arizona Public Service Company, Salt River Project Agricultural Improvement, and Power District, Public Service Company of New Mexico, Palo Verde Nuclear Generating Station, Units 1 and 2 and Independent Spent Fuel Storage Installation, Docket Nos. STN 50–528, STN 50–529, and 72–44, License Nos. NPF–41 and NPF–51.

CORRECTED ORDER APPROVING TRANSFERS OF CONTROL OF LICENSES (SUPERSEDING ORDER OF OCTOBER 21, 2021)

I.

Arizona Public Service Company (APS) is the licensed operator and a licensed co-owner of Renewed Facility Operating License Nos. NPF–41, NPF–51, and NPF–74 for the Palo Verde Nuclear Generating Station (Palo Verde), Units 1, 2, and 3, respectively, and the general license for the Palo Verde Independent Spent Fuel Storage Installation (ISFSI). Palo Verde is located in Maricopa County, Arizona. The other licensed co-owners (tenants-in-common), Salt River Project Agricultural Improvement and Power District (SRP); Southern California Edison Company; El Paso Electric Company; Public Service Company of New Mexico (PNM); Southern California Public Power Authority; and Los Angeles Department of Water and Power, hold possession-only rights for these licenses (*i.e.,* they are not licensed to operate the facility).

II.

By application dated May 19, 2021, as supplemented by letter dated September 14, 2021 (Agencywide Documents Access and Management System (ADAMS) Accession Nos. ML21139A330 and ML21257A399, respectively), APS, on behalf of SRP and PNM (together, the Applicants), requested, pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Sections 50.80, ''Transfer of licenses,'' and 72.50, ''Transfer of license,'' that the U.S. Nuclear Regulatory Commission (NRC, the Commission) consent to the partial license transfers from PNM to SRP of a 7.9333330 percent share of the undivided interests in Palo Verde, Unit 1, and of a 0.7933333 percent share of the undivided interests in Palo Verde, Unit 2.

According to the application, PNM currently has a 10.2 percent possession-only interest in Palo Verde, Units 1, 2, and 3. While most of this interest is directly owned by PNM, the remainder, specifically the Unit 1 interests and Unit 2 interests, is leased from financial institutions pursuant to sale-leaseback transactions PNM executed in 1985 and 1986 with investment and banking firms. As the lessee, PNM retained all the leasehold and control rights and responsibility associated therewith. The NRC consented to these sale-leaseback transactions (ADAMS Accession No. ML021680489). Under the terms of these past transactions, the Unit 1 interests and the Unit 2 interests are currently held in trust and leased to PNM pursuant to the NRC's prior orders, license amendments, and creditor regulations in accordance with 10 CFR 50.81, ''Creditor regulations.'' The sale-leaseback transactions were structured so that although the investment and banking firms own the Unit 1 interests and the Unit 2 interests, none has direct or indirect controlling interest in Palo Verde. Instead, under the leases, PNM retains leasehold and control rights and responsibility under the NRC licenses for these interests.

According to the application, PNM entered into a total of 11 sale-leaseback transactions refinancing portions of its interests in Palo Verde, Units 1 and 2. Six leases have since expired, leaving five remaining. The application concerns those remaining five leases, which are approaching their expiration dates and cannot be renewed, with four leases expiring in 2023 and one in 2024. The financial institutions have agreed to sell and transfer these interests to SRP starting from 2021 and SRP has agreed to purchase these interests, provided that SRP and PNM have secured the requisite approval from the NRC for SRP ownership of the incremental interests once the leases expire.

After the proposed partial license transfers, SRP would own a total of 25.423333 percent of the shares in Unit 1, and 18.2833333 percent of the shares in Unit 2, and PNM would own a total of 2.266667 percent of the shares in Unit 1, and 9.4066667 percent of the shares in Unit 2. APS owns a 29.1 percent tenant-in-common interest and holds both operating and possession rights in the NRC licenses. Further, APS operates, and would continue to operate, each of the Palo Verde units and the ISFSI pursuant to the operating rights granted to it under the license of each Palo Verde unit. The remaining tenant-in-common co-owners that hold possession-only rights in the NRC licenses are: Southern California Edison Company (15.8 percent); El Paso Electric Company (15.8 percent); Southern California Public Power Authority (5.91 percent); and Los Angeles Department of Water and Power (5.7 percent). Although the ownership interests in Palo Verde would change, significant actions involving operation of the Palo Verde units require unanimity of all owners of Palo Verde. Currently, no entity owns 50 percent or more of the voting interests. The same would be true following the proposed transfers of the leased interests. Accordingly, after the effective date of the transactions, there would be no change in the control of operation of Palo Verde; APS would continue to make all technical decisions that do not require approval from all owners of Palo Verde.

No physical changes or operational changes are proposed in the application.

A notice of the application and opportunity to comment, request a hearing, and petition for leave to intervene on the application was published in the **Federal Register** (FR) on June 29, 2021 (86 FR 34282). The NRC did not receive any comments or hearing requests on the application.

Under 10 CFR 50.80 and 10 CFR 72.50, no license for a production or utilization facility or ISFSI, or any right thereunder, shall be transferred, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the Commission gives its consent in writing. Upon review of the information in the application, and other information before the Commission, the NRC staff has determined that PNM can transfer a 7.9333330 percent share of the undivided interests in Palo Verde, Unit 1, and a 0.7933333 percent share of the undivided interest in Palo Verde, Unit 2, to SRP. The proposed transferee is qualified to be the holder of the licenses and transfer of the licenses is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

The findings set forth above are supported by an NRC staff safety evaluation dated October 21, 2021, which is available at ADAMS Accession No. ML21245A064.

III.

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), and 2234; and 10 CFR 50.80 and 10 CFR 72.50, *it is hereby ordered* that the application regarding the proposed partial license transfers is approved for Palo Verde, Units 1 and 2 and the Palo Verde ISFSI.

It is further ordered that after receipt of all required regulatory approvals of the proposed partial license transfers, the Applicants shall inform the Director of the NRC Office of Nuclear Reactor Regulation in writing of such receipt, and of the date of the closing of the initial transactions under the beneficial interest sales agreements described in the application, no later than 2 business days prior to the date of the closing. Should the closing not be completed within 1 year of the date of this Order, this Order shall become null and void, provided, however, that upon written application and for good cause shown, such date may be extended by order. The Applicants shall also inform the Director of the NRC Office of Nuclear Reactor Regulation in writing of the expiration of each of the leases no later than 2 business days after their expiration.

This Order is effective upon issuance and it corrects and supersedes the NRC Order approving the application issued on October 21, 2021 (ADAMS Accession No. ML21245A065) and published on October 27, 2021 (86 FR 59432).

For further details with respect to this Order, see the application dated May 19, 2021, as supplemented by letter dated September 14, 2021, and the NRC staff's safety evaluation dated October 21, 2021, which are available for public inspection electronically through ADAMS in the NRC Library at *https://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems accessing the documents located in ADAMS

should contact the NRC Public Document Room reference staff by telephone at 1–800–397–4209 or 301–415–4737 or by email to *pdr.resource@nrc.gov.*

Dated: November 17, 2021.

For the Nuclear Regulatory Commission

/RA/

Bo M. Pham,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2021–25621 Filed 11–23–21; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Product Change—Parcel Select and Parcel Return Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 24, 2021.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 2, 2021, it filed with the Postal Regulatory Commission a *USPS Request to Add Parcel Select and Parcel Return Service Contract 14 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2022–17, CP2022–18.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2021–25697 Filed 11–23–21; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 24, 2021.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 9, 2021, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 728 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2022–19, CP2022–21.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2021–25701 Filed 11–23–21; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 24, 2021.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 2, 2021, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 727 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2022–18, CP2022–19.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2021–25698 Filed 11–23–21; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 24, 2021.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 19, 2021, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & First-Class Package Service Contract 209 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2022–21, CP2022–23.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2021–25702 Filed 11–23–21; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93608; File No. SR–CboeBZX–2021–052]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To List and Trade Shares of the Global X Bitcoin Trust Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares

November 18, 2021.

On August 3, 2021, Cboe BZX Exchange, Inc. (''BZX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the Global X Bitcoin Trust (''Trust'') under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares. The proposed rule change was published for comment in the **Federal Register** on August 23, 2021.[3]

On September 29, 2021, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 92689 (Aug. 17, 2021), 86 FR 47176 (''Notice''). Comments on the proposed rule change can be found at: *https://www.sec.gov/comments/sr-cboebzx-2021-052/srcboebzx2021052.htm.*

[4] 15 U.S.C. 78s(b)(2).

proposed rule change.[5] This order institutes proceedings under Section 19(b)(2)(B) of the Act[6] to determine whether to approve or disapprove the proposed rule change.

I. Summary of the Proposal

As described in more detail in the Notice,[7] the Exchange proposes to list and trade the Shares of the Trust under BZX Rule 14.11(e)(4), which governs the listing and trading of Commodity-Based Trust Shares on the Exchange.

The investment objective of the Trust would be to reflect the performance of the price of bitcoin less the expenses of the Trust's operations. The Trust is not actively managed and will not seek to reflect the performance of any benchmark or index.[8] Each Share will represent a fractional undivided beneficial interest in the bitcoin held by the Trust. The Trust's assets will consist of bitcoin held by the custodian on behalf of the Trust. The Trust generally does not intend to hold cash or cash equivalents. However, there may be situations where the Trust will hold cash on a temporary basis.[9]

In seeking to achieve its investment objective, the Trust would hold bitcoin and value its assets daily in accordance with Generally Accepted Accounting Principles (''GAAP''), which, according to the Exchange, generally value bitcoin by reference to orderly transactions in the principal active market for bitcoin.[10]

The net asset value (''NAV'') for the Trust will be calculated by the administrator once a day and will be disseminated daily to all market participants at the same time.[11] The Sponsor will use fair value standards according to GAAP to value the assets and liabilities of the Trust.[12] According to the Exchange, the fair value of an asset that is traded on a market is measured by reference to the orderly transactions on an active market. Among all active markets with orderly transactions, the market that is used to determine the fair value of an asset is the principal market (with exceptions), which is either the market on which the Trust actually transacts or, if there is sufficient evidence, the market with the most trading volume and level of activity for the asset.[13] Where there is no active market with orderly transactions for an asset, the Sponsor's valuation committee will follow policies and procedures to determine the fair value.[14]

The Trust will provide information regarding the Trust's bitcoin holdings, as well as an Intraday Indicative Value (''IIV'') per Share updated every 15 seconds, as calculated by the Exchange or a third-party financial data provider during the Exchange's Regular Trading Hours (9:30 a.m. ET to 4:00 p.m. ET). The IIV will be calculated by using the prior day's closing NAV per Share as a base and updating that value during Regular Trading Hours to reflect changes in the value of the Trust's bitcoin holdings during the trading day.[15]

When the Trust sells or redeems its Shares, it will do so in ''in-kind'' transactions in blocks of Shares (in an amount to be determined). Authorized participants will deliver, or facilitate the delivery of, bitcoin to the Trust's account with the custodian when they purchase Shares, and the Trust, through the custodian, will deliver bitcoin to such authorized participants when they redeem Shares with the Trust.[16]

II. Proceedings To Determine Whether To Approve or Disapprove SR–CboeBZX–2021–052 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act[17] to determine whether the proposed rule change should be approved or disapproved. Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change, as discussed below. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[18] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be ''designed to prevent fraudulent and manipulative acts and practices'' and ''to protect investors and the public interest.''[19]

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in the Notice,[20] in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on the following questions and asks commenters to submit data where appropriate to support their views:

1. What are commenters' views on whether the proposed Trust and Shares would be susceptible to manipulation? What are commenters' views generally on whether the Exchange's proposal is designed to prevent fraudulent and manipulative acts and practices? What are commenters' views generally with respect to the liquidity and transparency of the bitcoin markets, the bitcoin markets' susceptibility to manipulation, and thus the suitability of bitcoin as an underlying asset for an exchange-traded product?

2. What are commenters' views of the Exchange's assertion that the regulatory and financial landscapes relating to

[5] *See* Securities Exchange Act Release No. 93174, 86 FR 55043 (Oct. 5, 2021). The Commission designated November 21, 2021, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Notice, *supra* note 3.

[8] *See id.* at 47184–85. Global X Digital Assets, LLC (''Sponsor'') is the sponsor of the Trust, and Delaware Trust Company is the trustee. The Sponsor will select the administrator, transfer agent, and marketing agent in connection with the creation and redemption of the Shares, and a third-party regulated custodian that will be responsible for custody of the Trust's bitcoin. *See id.* at 47177, 47184.

[9] *See id.* at 47184.

[10] *See id.* at 47185.

[11] *See id.* at 47186.

[12] *See id.* at 47185.

[13] The Sponsor will first determine which markets are likely to be active markets with orderly transactions for bitcoin. Among the venues supporting active markets with orderly transactions, the Sponsor will determine to which such venues the Trust has access and refer to these as eligible venues. Eligible venues consist of eligible over-the-counter venues and eligible exchanges. The Sponsor will then determine the principal market for bitcoin as either the market that the Trust normally transacts in for bitcoin, or, if the Trust does not normally transact in any market or the Sponsor has sufficient evidence that a particular market has the highest trading volume and level of activity, such market. The Trust will not purchase or, barring the liquidation of the Trust or the Trust incurring certain extraordinary expenses or liabilities not contractually assumed by the Sponsor, sell bitcoin directly. As a result, the Sponsor expects that the principal market will generally be the market with the highest trading volume and level of activity, which the Sponsor expects will typically be an eligible exchange. The Sponsor will determine the principal market for bitcoin at least quarterly and more frequently as circumstances warrant. *See id.*

[14] *See id.*

[15] *See id.* at 47185–86.

[16] *See id.* at 47184.

[17] 15 U.S.C. 78s(b)(2)(B).

[18] *Id.*

[19] 15 U.S.C. 78f(b)(5).

[20] *See* Notice, *supra* note 3.

bitcoin and other digital assets have changed significantly since 2016? [21] Are the changes that the Exchange identifies sufficient to support the determination that the proposal to list and trade the Shares is designed to protect investors and the public interest and is consistent with the other applicable requirements of Section 6(b)(5) of the Act?

3. The Exchange states that ''approving this proposal . . . [would] allow U.S. investors with access to bitcoin in a regulated and transparent exchange-traded vehicle that would act to limit risk'' associated with exposure through other means.[22] Further, the Exchange asserts that ''the manipulation concerns previously articulated by the Commission are sufficiently mitigated to the point that they are outweighed by quantifiable investor protection issues that would be resolved by approving this proposal.'' [23] What are commenters' views regarding such assertions?

4. According to the Exchange, ''[n]early every measurable metric related to [Chicago Mercantile Exchange's] Bitcoin Futures has trended consistently up since launch and/or accelerated upward in the past year.'' [24] Based on data provided and the academic research cited by the Exchange, do commenters agree that the Chicago Mercantile Exchange (''CME'')'s bitcoin futures market now represents a regulated market of significant size? [25] What are commenters' views on whether there is a reasonable likelihood that a person attempting to manipulate the Shares would also have to trade on CME to manipulate the Shares? What are commenters' views on the Exchange's assertion that the combination of (a) CME bitcoin futures leading price discovery; (b) the overall size of the bitcoin market; and (c) the ability for market participants to buy or sell large amounts of bitcoin without significant market impact would help to prevent the Shares from becoming the predominant force on pricing in either the bitcoin spot or CME bitcoin futures markets? [26]

5. What are commenters' views on the Exchange's statement, generally, that bitcoin is resistant to price manipulation and that other means to prevent fraudulent and manipulative acts and practices exist to justify dispensing with the requisite surveillance sharing agreement with a regulated market of significant size related to bitcoin? [27] What are commenters' views on the Exchange's assertion in support of such statement that significant liquidity in the spot market and the impact of market orders on the overall price of bitcoin mean that attempting to move the price of bitcoin is costly? [28] What are commenters' views on the Exchange's assertion that offering only in-kind creations and redemptions provides unique protections against potential attempts to manipulate the Shares and that the price the Sponsor uses to value the Trust's bitcoin ''is not particularly important''? [29]

III. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, and the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[30]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by December 15, 2021. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by December 29, 2021.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2021–052 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–CboeBZX–2021–052. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2021–052 and should be submitted by December 15, 2021. Rebuttal comments should be submitted by December 29, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–25625 Filed 11–23–21; 8:45 am]

BILLING CODE 8011–01–P

[21] *See id.* at 47178–79.

[22] *See id.* at 47179.

[23] *See id.* at 47183.

[24] *See id.* at 47181.

[25] *See id.* at 47181–84, 47188.

[26] *See id.* at 47188–89.

[27] *See id.* at 47183 n.54.

[28] *See id.* at 47189.

[29] *See id.*

[30] Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[31] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93610; File No. SR–ICC–2021–020]

Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating to the Stress Testing Framework and the Indirect Participant Risk Monitoring and Review Policy

November 18, 2021.

I. Introduction

On September 27, 2021, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to revise the ICC CDS Clearing: Stress-Testing Framework (''Stress Testing Framework'') and to adopt and formalize the ICC Indirect Participant Risk Monitoring and Review Policy (''Indirect Participant Risk Policy''). The proposed rule change was published in the **Federal Register** on October 7, 2021.[3] The Commission did not receive comments on the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

The proposed rule change would revise the Stress Testing Framework, which describes various stress tests executed by ICC and the governance process surrounding these tests. The proposed changes relate primarily to clarifications of ICC's stress testing practices, updates to descriptions of stress scenarios and governance, and clean-up changes to certain definitions and references throughout the Stress Testing Framework, as well as the addition of an appendix to the Stress Testing Framework to provide details on ICC's existing stress test methodology. The proposed rule change also would adopt the Indirect Participant Risk Policy to memorialize ICC's existing risk management practices for the adequate identification, monitoring, and management of risks arising from, and relating to, indirect participants, defined as the underlying clients of ICC's Clearing Participants (''CPs'').[4]

A. Stress Testing Framework

The proposed changes define and/or abbreviate various terms throughout the document, starting in Section 2 (Overview). For example, the term Guaranty Fund would be abbreviated as ''GF.'' Regarding the stress test methodology in Section 3 (Methodology), ICC would define the term financial resources in a new footnote to mean ''available funds from the Initial Margin (IM) requirements and GF contributions related to the selected portfolios.'' The proposed footnote also would clarify that the related analysis of IM requirements may exclude certain charges to ''provision for losses associated with bid/offer exposure upon portfolio liquidation.'' Similarly, ICC would make corresponding changes to the subsequent text in Section 3 to conform the description of charges that may be excluded from analyzed IM requirements. As summarized in more detail below, ICC also would add a new Section 16 as Appendix A that describes details on ICC's stress test methodology, and would add references to such appendix in Sections 3, 5 (Predefined Scenarios), and 13 (Interpretation of Results). ICC would add proposed footnotes in Subsection 5.1 (Historically Observed Extreme but Plausible Market Scenarios) that contain formulas for defining the greatest observed N-day relative spread increases and decreases regarding certain spread scenarios. The proposed amendments to Section 12 (Portfolio Selection) would specify that client stress testing is executed daily (rather than ''at least monthly''), and also reference the Indirect Participant Risk Policy for further details on the analysis. In Section 14 (Post-Stress Testing Review & Governance Structure), ICC proposes a grammatical update to make the term ''meeting'' plural to reflect the weekly and monthly meetings of the ICC Risk Management Department (''Risk Department''), and to memorialize that the Stress Testing Framework is subject to review by the ICC Risk Committee and review and approval by the Board at least annually. ICC also proposes to include the Indirect Participant Risk Policy as a reference in Section 15.

As noted above, ICC proposes new Section 16 as Appendix A, which is intended to provide more detail and clarity on ICC's stress test methodology and would not change the existing methodology.[5] The proposed appendix defines key terms and sets out underlying formulas and equations used for stress testing. Key terms and related equations to define them include, among others, Stress Testing Profit/Losses, which represent the CP portfolio hypothetical response to the considered stress testing scenarios. The proposed appendix also explains the determination of the order of defaulting CP Affiliate Groups (''AGs''), which consist of CPs that fall under a common parent entity, in order to establish if the available financial resources are sufficient to cover hypothetical losses associated with the two greatest CP AG uncollateralized stress losses, and discusses the consideration given to wrong way risk exposure. Finally, the proposed appendix details how ICC determines if the available financial resources are sufficient to cover the hypothetical losses associated with the two greatest CP AG uncollateralized losses under the extreme but plausible scenarios.

B. Indirect Participant Risk Policy

The risk management program at ICC includes various elements designed to ensure the adequate identification, monitoring and management of risks arising from and relating to indirect participants. ICC proposes to adopt the proposed Indirect Participant Risk Policy to memorialize such practices, analyses, and associated governance arrangements. The proposed Indirect Participant Risk Policy document is divided into seven sections, which are summarized below.

Section 1 (Background) introduces the purpose of the document and defines key terms. More specifically, Section 1 defines Indirect Participants (''IPs'') as the underlying clients of ICC's CPs. Section 1 also defines Futures Commission Merchants/Broker Dealers (''FCMs/BDs'') as ICC's CPs with clients. Section 1 states that Indirect Participants can pose risk to CPs and indirectly to ICC due to the presence of Large Traders (''LTs''). A Large Trader is defined as a client of a CP, or a simultaneous client of multiple CPs, that exhibits large risk exposure in its portfolio that transpires through concentrated position(s), significant level of collateralization, and large uncollateralized losses under extreme but plausible market stress scenarios.

Sections 2 through 4 describe and memorialize the identification, monitoring, and risk management practices related to IPs and the presence of LTs. Section 2 introduces a client-

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change Relating to the Stress Testing Framework and the Indirect Participant Risk Monitoring and Review Policy, Exchange Act Release No. 93235 (Oct. 1, 2021); 86 FR 55888 (Oct. 7, 2021) (SR–ICC–2021–020) (''Notice'').

[4] The following description of the proposed rule change is substantially excerpted from the Notice.

[5] *See* Notice at 55888.

focused risk report, named the Client Gross Margin Report (''CGMR''), that enables ICC to determine the presence of potential LTs and assess the level of risk that they may pose to the CP and/or ICC. The CGMR summarizes client risk exposure across all FCMs/BDs and corresponding IPs, which allows the Risk Department to monitor and identify the FCMs/BDs with the largest IPs. The Risk Department and Risk Committee review the results from the CGMR at least on a monthly basis, and the Risk Department has the ability to monitor the IPs more frequently, if it deems necessary. Section 3 introduces and details the Large Trader Report, which is a complementary report to the CGMR that summarizes ICC's IPs with risk profiles prone to adverse risk distribution, due to their size, across all FCMs/BDs. The criteria for the selection of IPs in the Large Trader Report is based on analyzing IPs' U.S. Dollar (''USD'') equivalent Gross IM requirements across FCMs/BDs and identifying a select group of accounts with the largest total USD equivalent Gross IM requirements. Section 3 also describes another complementary report, called the Adverse Risk Distribution Report, which indicates the probability of an IP adversely distributing its risk across multiple FCMs/BDs and thus provides guidance on additional IPs to be included for reporting. Section 3 states that the Large Trader Report and the Adverse Risk Distribution Report analysis are executed daily, and that the Risk Committee reviews the results from both reports at least on a monthly basis. Section 4 introduces and describes the Customer Stress Test Risk Report (''CSTRR''), which is an additional complementary analysis to the CGMR for client portfolio level stress testing. The CSTRR analysis assumes that individual LTs are entering a state of default and triggering the default of their corresponding FCMs/BDs. The IPs selected for the analysis exhibit the largest stress loss over financial resources being tested for each of the selected top FCMs/BDs with the largest USD equivalent Gross IM requirements, thereby capturing the clients with the largest risk exposure, who are deemed LTs. Section 4 states that the Risk Department executes individual client portfolio stress testing on a daily basis, and reviews the results with the Risk Committee at least on a monthly basis.

Section 5 (Governance) memorializes governance procedures associated with the performance and review of the risk analyses summarized above. The Indirect Participant Risk Policy specifies the group or individual involved in the execution, interpretation, review, and reporting of the analyses as well as the frequency. More specifically, Section 5 states that the Risk Department staff executes and reviews the CGMR and Large Trader Report at least monthly, with monthly reporting to the Risk Committee. Section 5 also states that the IP stress testing is executed daily by the Risk Department with monthly review and reporting to the Risk Committee via the CSTRR. Section 5 further states that the Chief Risk Officer, or a designee, performs the review and interpretation of the CGMR, Large Trader Report, and CSTRR results. Section 5 also sets out the actions to be taken if the Risk Department and the Risk Committee deem the risk arising from IPs to be significant.

Sections 6 and 7 provide additional reference information regarding the Indirect Participant Risk Policy. In Section 6, ICC includes a references section with a specific reference to the Stress Testing Framework. Section 7 includes a revision history that tracks the date, version, and revisions to the document.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.[6] For the reasons given below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act[7] and Rules 17Ad–22(e)(2)(i) and (v), (e)(4)(vi), and (e)(19) thereunder.[8]

A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of ICC be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, as well as to assure the safeguarding of securities and funds which are in the custody or control of ICC or for which it is responsible. [9]

As described in Section II.A above, the proposed changes to the Stress Testing Framework generally provide more detail to inform the ongoing implementation of the stress testing methodology for use in ICC's daily risk management process by defining key terms, adding a new appendix that describes ICC's existing stress test methodology with specific formulas or equations, referencing such appendix in relevant sections of the document, memorializing the internal governance review and approval process, and making other clarification and clean-up changes.

The Commission believes that, by defining the key term ''financial resources'' and clarifying that the related analysis of IM requirements may exclude certain charges to provision for losses associated with bid/offer exposure upon portfolio liquidation, the proposed rule change would enhance ICC's ability to establish whether available financial resources are sufficient to cover hypothetical losses of the two greatest clearing participant affiliate groups.

The proposed rule change also updates certain terminology and references, and makes other clarifying updates to the Stress Testing Framework. Specifically, such changes include: using ''GF'' to reference the term Guaranty Fund; adding footnotes that contain formulas for defining the greatest observed N-day relative spread increases and decreases regarding certain spread scenarios; making the term ''meeting'' plural to reflect the weekly and monthly meetings of the Risk Department; specifying that client stress testing is executed daily (rather than ''at least monthly''); including the Indirect Participant Risk Policy as a general reference in Section 15 of the document and specifically cross-referencing the Indirect Participant Risk Policy in Section 12 for further details on the client stress testing analysis; adding Appendix A to provide more detail and clarity on ICC's stress test methodology by defining key terms and underlying formulas and equations used for stress testing, explaining how ICC accounts for wrong way risk exposure, and also how ICC determines the order of defaulting CP AGs and whether the available financial resources are sufficient to cover the hypothetical losses associated with the two greatest CP AG uncollateralized losses under the extreme but plausible scenarios; and including specific references to proposed Appendix A in relevant sections of the document. The Commission believes that all of these clarifications and updates enhance the accuracy, completeness, and readability of the Stress Testing Framework.

[6] 15 U.S.C. 78s(b)(2)(C).

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 17 CFR 240.17Ad–22(e)(2)(i) and (v), (e)(4)(vi), and (e)(19).

[9] 15 U.S.C. 78q–1(b)(3)(F).

Further, as described in Section II.A above, the proposed changes to the Stress Testing Framework specify that it is subject to review by the Risk Committee and review and approval by the Board at least annually. The Commission believes that these revisions update and clarify the governance arrangements of the Stress Testing Framework and, in turn, would help to facilitate consistent, ongoing adherence by the relevant groups at ICC.

For these reasons, the Commission believes that the proposed changes to the Stress Testing Framework, taken together, would enhance the accuracy and transparency of ICC's stress testing practices and related governance processes. The Commission also believes that having policies and procedures that clearly and accurately document ICC's stress testing practices and related governance processes are an important and integral component to the effectiveness of ICC's risk management system, which promotes the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions and contributes to the safeguarding of securities and funds associated with security-based swap transactions in ICC's custody or control, or for which ICC is responsible. As such, the proposed rule changes to the Stress Testing Framework are designed to promote the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions and to contribute to the safeguarding of securities and funds associated with security-based swap transactions in ICC's custody or control, or for which ICC is responsible within the meaning of Section 17A(b)(3)(F) of the Act.[10]

As described in Section II.B above, the proposed Indirect Participant Risk Policy memorializes ICC's current practices, analyses, and associated governance arrangements to ensure the adequate identification, monitoring, and management of risks arising from and relating to indirect participants. The Commission believes all seven sections of the proposed document, as discussed in Part II.B above, would help ensure that ICC is able to promptly and accurately clear and settle transactions and safeguard securities and funds which are in its custody or control or for which it is responsible. More specifically, the Commission believes that Section 1, by defining key terms used throughout the document, such as Indirect Participants, Large Traders, and FCMs/BDs; Sections 2 through 4, by describing and memorializing the identification, monitoring, and specific risk reports and analyses related to Indirect Participants and the presence of Large Traders; Section 5, by memorializing governance procedures associated with the performance and review of ICC's risk analyses; Section 6, by including a references section with a specific reference to the Stress Testing Framework; and Section 7, by including a revision history that tracks the date, version, and revisions of all document changes, would complement the Stress Testing Framework and strengthen ICC's overall risk management program by formalizing the additional risk management practices and associated governance processes specifically designed for identifying and monitoring indirect participants that can pose significant risks to CPs, and indirectly to ICC. By helping ICC manage such risks and the credit exposures associated with clearing credit default swaps (''CDS'') transactions, the Commission believes that the proposed adoption of the Indirect Participant Risk Policy would help improve ICC's ability to avoid the losses that could result from the underestimation of ICC's credit exposures and miscalculation of margin requirements for such transactions. Because such losses could disrupt ICC's ability to operate and thus clear and settle CDS transactions, the Commission finds the proposed Indirect Participant Risk Policy, by helping to enhance ICC's overall risk management and financial stability, would help to ensure that ICC is able to promptly and accurately clear and settle CDS transactions. Additionally, because such losses could also threaten access to securities and funds in ICC's control, the Commission finds the proposed rule change would help assure the safeguarding of securities and funds that are in the custody or control of ICC or for which it is responsible.

Therefore, for all of the foregoing reasons, the Commission finds that the proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds in ICE Clear Europe's custody and control, consistent with the Section 17A(b)(3)(F) of the Act.[11]

B. Consistency With Rules 17Ad–22(e)(2)(i) and (v) Under the Act

Rules 17Ad–22(e)(2)(i) and (v) require ICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent and specify clear and direct lines of responsibility, respectively.[12]

The Commission believes that the proposed changes to the Stress Testing Framework, in changing the term ''meeting'' to ''meetings'' to reflect that Risk Department management holds weekly and monthly meetings to review and discuss the previous period's stress testing results and issues for each considered stress test scenario involving CP AGs, would strengthen the governance arrangements set forth in the Stress Testing Framework by updating and clearly documenting the frequency of Risk Department management meetings to review and discuss the previous period's stress testing results for CP AGs, consistent with Rule 17Ad–22(e)(2)(i).[13] The Commission also believes that the proposed changes to the Stress Testing Framework, in memorializing that the Stress Testing Framework is subject to review by the Risk Committee and review and approval by the Board at least annually, would specify the roles and responsibilities of the Risk Committee and the Board in reviewing and approving the Stress Testing Framework on an annual basis, consistent with Rule 17Ad–22(e)(2)(v).[14]

Further, the Commission believes that the proposed Indirect Participant Risk Policy, in specifying in Section 2 that the Risk Department and Risk Committee review the results from the CGMR at least on a monthly basis, and the Risk Department has the ability to monitor the IPs more frequently, if it deems necessary; in specifying in Section 3 that the Large Trader Report and the Adverse Risk Distribution Report analysis are executed daily by the Risk Department, and that the Risk Committee reviews the results from both reports at least on a monthly basis; and in specifying in Section 4 that the Risk Department executes individual client portfolio stress testing on a daily basis, and reviews the results with the Risk Committee at least on a monthly basis, would clearly document the roles and responsibilities of the Risk Department and the Risk Committee in the ongoing execution and review of specific risk reports and analyses related to Indirect Participants and the presence of Large Traders, consistent with Rule 17Ad–22(e)(2)(v).[15] The Commission also believes that Section 5, in memorializing the governance procedures associated with the

[10] 15 U.S.C. 78q–1(b)(3)(F).

[11] 15 U.S.C. 78q–1(b)(3)(F).

[12] 17 CFR 240.17Ad–22(e)(2)(i) and (v).

[13] 17 CFR 240.17Ad–22(e)(2)(i).

[14] 17 CFR 240.17Ad–22(e)(2)(v).

[15] 17 CFR 240.17Ad–22(e)(2)(v).

performance and review of ICC's risk analyses as specified in Sections 2 through 4 above; in specifying that the Chief Risk Officer, or a designee, performs the review and interpretation of the CGMR, Large Trader Report, and CSTRR results; and in documenting the actions to be taken if the Risk Department and the Risk Committee deem the risk arising from Indirect Participants to be significant, would clearly assign governance responsibilities to the Risk Department, the Risk Committee, and the Chief Risk Officer in terms of the execution, interpretation, review, and reporting of the risk analyses, as well as the frequency of performing such responsibilities, consistent with Rule 17Ad–22(e)(2)(v).[16]

The Commission therefore finds that these aspects of proposed rule change would ensure that ICC's governance processes for the Stress Testing Framework and the Indirect Participant Risk Policy are clear, transparent, and documented accurately, consistent with the requirements of Rules 17Ad–22(e)(2)(i) and (v).[17]

C. Consistency With Rule 17Ad–22(e)(4)(vi) Under the Act

Rule 17Ad–22(e)(4)(vi) requires ICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by testing the sufficiency of its total financial resources available to meet the minimum financial resource requirements, as applicable, by conducting stress testing of its total financial resources once each day using standard predetermined parameters and assumptions; conducting a comprehensive analysis on at least a monthly basis of the existing stress testing scenarios, models, and underlying parameters and assumptions; and reporting the results of its analyses to appropriate decision makers at ICC.[18]

The Commission believes that the proposed changes to the Stress Testing Framework, in defining the key term ''financial resources'' and clarifying that the related analysis of IM requirements may exclude certain charges to provision for losses associated with bid/offer exposure upon portfolio liquidation; in specifying that client stress testing is executed daily (rather than ''at least monthly''), and also referencing the Indirect Participant Risk Policy for further details on the analysis; and in adding Appendix A to provide more detail and clarity on ICC's stress test methodology by defining key terms and underlying formulas and equations used for stress testing, explaining how ICC accounts for wrong way risk exposure, and also how ICC determines the order of defaulting CP AGs and whether the available financial resources are sufficient to cover the hypothetical losses associated with the two greatest CP AG uncollateralized losses under the extreme but plausible scenarios, would more clearly describe how ICC manages its credit exposures to CPs and tests the sufficiency of its total financial resources available to cover the default of the two greatest CP AGs.

For all of the foregoing reasons, the Commission finds that these aspects of the proposed rule change are consistent with the requirements of Rule 17Ad–22(e)(4)(vi).[19]

D. Consistency With Rule 17Ad–22(e)(19) Under the Act

Rule 17Ad–22(e)(19) requires ICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor, and manage the material risks to ICC arising from arrangements in which firms that are indirect participants in ICC rely on the services provided by direct participants to access ICC's payment, clearing, or settlement facilities.[20] The Commission believes the proposed Indirect Participant Risk Policy, in describing and memorializing the identification, monitoring, and specific risk reports and analyses related to Indirect Participants and the presence of Large Traders, would formalize ICC's risk management practices and governance procedures associated with the performance and review of the risk reports and analyses that are specifically designed for identifying and monitoring indirect participants that can pose material risks to their CPs as direct participants of ICC, and indirectly to ICC. The Commission also believes that the proposed changes to the Stress Testing Framework, in specifying that individual client legal entity stress testing is executed daily (rather than ''at least monthly''), would enhance ICC's ability to more readily identify, monitor, and manage the level of risks arising from indirect participants as clients of CPs who rely on their CPs to access clearing and settlement facilities at ICC.

For these reasons, the Commission finds that these aspects of the proposed rule change are consistent with the requirements of Rule 17Ad–22(e)(19).[21]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A(b)(3)(F) of the Act[22] and Rules 17Ad–22(e)(2)(i) and (v), (e)(4)(vi), and (e)(19) thereunder.[23]

It is therefore ordered pursuant to Section 19(b)(2) of the Act[24] that the proposed rule change (SR–ICC–2021–020) be, and hereby is, approved.[25]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–25623 Filed 11–23–21; 8:45 am]

BILLING CODE 8011–01–P

[16] 17 CFR 240.17Ad–22(e)(2)(v).

[17] 17 CFR 240.17Ad–22(e)(2)(i) and (v).

[18] 17 CFR 240.17Ad–22(e)(4)(vi).

[19] 17 CFR 240.17Ad–22(e)(4)(vi).

[20] 17 CFR 240.17Ad–22(e)(19).

[21] 17 CFR 240.17Ad–22(e)(19).

[22] 15 U.S.C. 78q–1(b)(3)(F).

[23] 17 CFR 240.17Ad–22(e)(2)(i) and (v), (e)(4)(vi), and (e)(19).

[24] 15 U.S.C. 78s(b)(2).

[25] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34420; File No. 812–15249]

MVP Private Markets Fund, et al.

November 18, 2021.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of application for an order under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the ''Act'') and rule 17d–1 under the Act to permit certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and rule 17d–1 under the Act. Applicants request an order to permit a closed-end management investment company to co-invest in portfolio companies with affiliated investment funds.

APPLICANTS: MVP Private Markets Fund (the ''Fund''), Portfolio Advisors, LLC (''Portfolio Advisors''), PA Surf Fund, L.P., PA MAC Fund, L.P., PA-Ham Asia Investment Vehicle, L.P., Portfolio Advisors Private Equity Fund IX (Offshore), L.P., Portfolio Advisors Private Equity Fund IX, L.P., PA Growth

& Income Fund, L.P., PA Growth & Income Fund-A, L.P., PAREF VI Secondaries Feeder, L.P., PA Direct Credit Opportunities Fund II, L.P., PA Direct Credit Opportunities Fund II (Offshore), L.P., Portfolio Advisors Secondary Fund III (Offshore), L.P., PA Blue Fund, L.P., PA Pennsylvania Co-Investment Fund, L.P., Portfolio Advisors Asia Fund IV, L.P., Portfolio Advisors Private Equity Fund VIII (Offshore), L.P., Portfolio Advisors Credit Strategies Fund, L.P., Portfolio Advisors Credit Strategies Fund (Offshore), L.P., Portfolio Advisors Secondary Fund LP, PA Co-Investment Fund IV (Offshore), L.P., PA Co-Investment Fund IV, L.P., PA Direct Credit Opportunities Fund III, L.P, PA GP Solutions Fund (Offshore), L.P., PA GP Solutions Fund, L.P., PA MAC Fund (Offshore), L.P., PA Palace Feeder Fund, L.P., PA Palace Fund, L.P., PA Portfolio Advisors Secondary Fund, L.P., PA Senior Credit Opportunities Fund, L.P., PAREF VII Co-Investment Feeder, L.P., PAREF VII Primaries Feeder, L.P., PAREF VII Secondaries Feeder, L.P., PAREF VIII Co-Investment Feeder, L.P., Portfolio Advisors Asia Fund VI, L.P., Portfolio Advisors Asia Secondary Fund VII, L.P., Portfolio Advisors Private Equity Fund 2017 (Offshore), L.P., Portfolio Advisors Private Equity Fund 2017, L.P., Portfolio Advisors Private Equity Fund 2019 (Offshore), L.P., Portfolio Advisors Private Equity Fund 2019, L.P., Portfolio Advisors Private Equity Fund X (Offshore), L.P., Portfolio Advisors Private Equity Fund X, L.P., Portfolio Advisors Private Equity Fund XI (Offshore), L.P., Portfolio Advisors Private Equity Fund XI, L.P., Portfolio Advisors Real Estate Fund VI, L.P., Portfolio Advisors Real Estate Fund VII, L.P., Portfolio Advisors Real Estate Fund VIII, L.P., Portfolio Advisors Secondary Fund IV (Offshore), L.P. and Portfolio Advisors Secondary Fund IV, L.P.

FILING DATES: The application was filed on July 21, 2021, and amended on September 2, 2021 and October 1, 2021.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by emailing the Commission's Secretary at *Secretarys-Office@sec.gov* and serving applicants with a copy of the request, by email. Hearing requests should be received by the Commission by 5:30 p.m. on December 13, 2021, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at *Secretarys-Office@sec.gov.*

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: *Joshua.Deringer@faegredrinker.com.*

FOR FURTHER INFORMATION CONTACT: Laura L. Solomon, Senior Counsel, at (202) 551–6915 or Lisa Reid Ragen, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Introduction

1. The Applicants request an order of the Commission under sections 17(d) and 57(i) and rule 17d–1 thereunder (the ''Order'') to permit, subject to the terms and conditions set forth in the application (the ''Conditions''), a Regulated Fund [1] and one or more other Regulated Funds and/or one or more Affiliated Funds [2] to enter into Co-Investment Transactions with each other. ''Co-Investment Transaction'' means any transaction in which one or more Regulated Funds (or its Wholly-Owned Investment Sub) participated together with one or more Affiliated Funds and/or one or more other Regulated Funds in reliance on the Order. ''Potential Co-Investment Transaction'' means any investment opportunity in which a Regulated Fund (or its Wholly-Owned Investment Sub) could not participate together with one or more Affiliated Funds and/or one or more other Regulated Funds without obtaining and relying on the Order.[3]

Applicants

2. The Fund was organized under the Delaware Statutory Trust Act and is a closed-end management investment company registered under the Act. The Fund's Board [4] will be comprised of a majority of members who are Independent Trustees.[5]

3. Portfolio Advisors, a Connecticut limited liability company that is registered under the Advisers Act, serves as the investment adviser to the Fund.

4. Portfolio Advisors also serves as the investment adviser to each of the Existing Affiliated Funds. Applicants represent that each Existing Affiliated Fund is a separate and distinct legal entity and each would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act. The Portfolio Advisors Proprietary Accounts will hold various financial assets in a principal capacity. Portfolio Advisors and its affiliates may operate through wholly- or majority-owned subsidiaries. Currently, there are no Portfolio Advisors Proprietary Accounts or subsidiaries that exist and currently intend to participate in the co-investment program.

5. Applicants state that a Regulated Fund may, from time to time, form one or more Wholly-Owned Investment Subs.[6] Such a subsidiary may be

[1] ''Regulated Funds'' means the Fund and any Future Regulated Funds. ''Future Regulated Fund'' means a closed-end management investment company (a) that is registered under the Act or has elected to be regulated as a business development company (''BDC''); (b) whose investment adviser is an Adviser; and (c) that intends to participate in the co-investment program. ''Adviser'' means Portfolio Advisors and any future investment adviser that is (i) controlling, under common control with, or controlled by Portfolio Advisors, (ii) registered as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act''), and (iii) not a Regulated Fund or a subsidiary of a Regulated Fund. Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in section 55(a)(1) through 55(a)(3) and makes available significant managerial assistance with respect to the issuers of such securities.

[2] ''Affiliated Fund'' means the Existing Affiliated Funds, any Future Affiliated Fund or any Portfolio Advisors Proprietary Account. ''Existing Affiliated Funds'' means the investment vehicles identified in Schedule A of the application. ''Future Affiliated Fund'' means any entity (a) whose investment adviser is an Adviser; (b) that would be an investment company but for section 3(c)(1), 3(c)(5)(C) or 3(c)(7) of the Act; and (c) that intends to participate in the co-investment program. ''Portfolio Advisors Proprietary Account'' means any account of an Adviser or its affiliates or any company that is a direct or indirect, wholly- or majority-owned subsidiary of the Adviser or its affiliates, which, from time to time, may hold various financial assets in a principal capacity.

[3] All existing entities that currently intend to rely on the Order have been named as applicants and any existing or future entities that may rely on the Order in the future will comply with the terms and conditions of the application.

[4] ''Board'' means the board of trustees (or the equivalent) of a Regulated Fund.

[5] ''Independent Trustee'' means a member of the Board of any relevant entity who is not an ''interested person'' as defined in section 2(a)(19) of the Act. No Independent Trustee of a Regulated Fund will have a direct or indirect financial interest in any Co-Investment Transaction or any interest in any portfolio company, other than indirectly through share ownership in one of the Regulated Funds.

[6] ''Wholly-Owned Investment Sub'' means an entity (i) that is wholly-owned by a Regulated Fund

Continued

prohibited from investing in a Co-Investment Transaction with a Regulated Fund (other than its parent) or any Affiliated Fund because it would be a company controlled by its parent Regulated Fund for purposes of section 57(a)(4) and rule 17d–1. Applicants request that each Wholly-Owned Investment Sub be permitted to participate in Co-Investment Transactions in lieu of the Regulated Fund that owns it and that the Wholly-Owned Investment Sub's participation in any such transaction be treated, for purposes of the Order, as though the parent Regulated Fund were participating directly.

Applicants' Representations

A. Allocation Process

6. Applicants state that the Advisers are presented with a substantial number of investment opportunities each year on behalf of their clients, and that the Advisers must determine how to allocate those opportunities in a manner that, over time, is fair and equitable to all of their clients. Such investment opportunities may be Potential Co-Investment Transactions.

7. Applicants represent that the Adviser has established processes for allocating initial investment opportunities, opportunities for subsequent investment in an issuer and dispositions of securities holdings reasonably designed to treat all clients fairly and equitably. Further, Applicants represent that these processes will be extended and modified in a manner reasonably designed to ensure that the additional transactions permitted under the Order will both (i) be fair and equitable to the Regulated Funds and Affiliated Funds and (ii) comply with the Conditions. In particular, consistent with Condition 1, if a Potential Co-Investment Transaction falls within the then-current Objectives and Strategies [7] and any Board-Established Criteria [8] of a Regulated Fund, the policies and procedures will require that the Adviser to such Regulated Fund receives sufficient information to allow such Adviser's investment committee to make its independent determination and recommendations under the Conditions.

8. The Adviser to each applicable Regulated Fund will then make an independent determination of the appropriateness of the investment for the Regulated Fund in light of the Regulated Fund's then-current circumstances. If the Adviser to a Regulated Fund deems the Regulated Fund's participation in such Potential Co-Investment Transaction to be appropriate, then it will formulate a recommendation regarding the proposed order amount for the Regulated Fund.

9. Applicants state that, for each Regulated Fund and Affiliated Fund whose Adviser recommends participating in a Potential Co-Investment Transaction, the Adviser will submit a proposed order amount to an internal investment committee which the Adviser will establish to handle the allocation of investment opportunities in Potential Co-Investment Transactions. Applicants state further that, at this stage, each proposed order amount may be reviewed and adjusted, in accordance with the Advisers' written allocation policies and procedures, by the Adviser's investment committee.[9] The order of a Regulated Fund or Affiliated Fund resulting from this process is referred to as its ''Internal Order.'' The Internal Order will be submitted for approval by the Required Majority of any participating Regulated Funds in accordance with the Conditions.[10]

10. If the aggregate Internal Orders for a Potential Co-Investment Transaction do not exceed the size of the investment opportunity immediately prior to the submission of the orders to the underwriter, broker, dealer or issuer, as applicable (the ''External Submission''), then each Internal Order will be fulfilled as placed. If, on the other hand, the aggregate Internal Orders for a Potential Co-Investment Transaction exceed the size of the investment opportunity immediately prior to the External Submission, then the allocation of the opportunity will be made pro rata on the basis of the size of the Internal Orders.[11] If, subsequent to such External Submission, the size of the opportunity is increased or decreased, or if the terms of such opportunity, or the facts and circumstances applicable to the Regulated Funds' or the Affiliated Funds' consideration of the opportunity, change, the participants will be permitted to submit revised Internal Orders in accordance with written allocation policies and procedures that the Advisers will establish, implement and maintain. The Board of the Regulated Fund will then either approve or disapprove of the investment opportunity in accordance with condition 2, 6, 7, 8 or 9, as applicable.

B. Follow-On Investments

11. Applicants state that from time to time the Regulated Funds and Affiliated Funds may have opportunities to make

(with such Regulated Fund at all times holding, beneficially and of record, 100% of the voting and economic interests); (ii) whose sole business purpose is to hold one or more investments on behalf of such Regulated Fund (and, in the case of a SBIC Subsidiary (defined below), maintain a license under the SBA Act (defined below) and issue debentures guaranteed by the SBA (defined below)); (iii) with respect to which such Regulated Fund's Board has the sole authority to make all determinations with respect to the entity's participation under the Conditions; and (iv) that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act. ''SBIC Subsidiary'' means a Wholly-Owned Investment Sub that is licensed by the Small Business Administration (the ''SBA'') to operate under the Small Business Investment Act of 1958, as amended, (the ''SBA Act'') as a small business investment company.

[7] ''Objectives and Strategies'' means with respect to any Regulated Fund, its investment objectives and strategies, as described in its most current registration statement on Form N–2, other current filings with the Commission under the Securities Act of 1933 (the ''Securities Act'') or under the Securities Exchange Act of 1934, as amended, and its most current report to stockholders.

[8] ''Board-Established Criteria'' means criteria that the Board of a Regulated Fund may establish from time to time to describe the characteristics of Potential Co-Investment Transactions regarding which the Adviser to the Regulated Fund should be notified under Condition 1. The Board-Established Criteria will be consistent with the Regulated Fund's Objectives and Strategies. If no Board-Established Criteria are in effect, then the Regulated Fund's Adviser will be notified of all Potential Co-Investment Transactions that fall within the Regulated Fund's then-current Objectives and Strategies. Board-Established Criteria will be objective and testable, meaning that they will be based on observable information, such as industry/sector of the issuer, minimum EBITDA of the issuer, asset class of the investment opportunity or required commitment size, and not on characteristics that involve a discretionary assessment. The Adviser to the Regulated Fund may from time to time recommend criteria for the Board's consideration, but Board-Established Criteria will only become effective if approved by a majority of the Independent Trustees. The Independent Trustees of a Regulated Fund may at any time rescind, suspend or qualify its approval of any Board-Established Criteria, though applicants anticipate that, under normal circumstances, the Board would not modify these criteria more often than quarterly.

[9] The reason for any such adjustment to a proposed order amount will be documented in writing and preserved in the records of the Advisers.

[10] ''Required Majority'' means a required majority, as defined in section 57(o) of the Act. In the case of a Regulated Fund that is a registered closed-end fund, the Board members that make up the Required Majority will be determined as if the Regulated Fund were a BDC subject to section 57(o).

[11] Each Adviser will maintain records of all proposed order amounts, Internal Orders and External Submissions in conjunction with Potential Co-Investment Transactions. Each applicable Adviser will provide the Eligible Trustees with information concerning the Affiliated Fund's and Regulated Funds' order sizes to assist the Eligible Trustees with their review of the applicable Regulated Fund's investments for compliance with the Conditions. ''Eligible Trustees'' means, with respect to a Regulated Fund and a Potential Co-Investment Transaction, the members of the Regulated Fund's Board eligible to vote on that Potential Co-Investment Transaction under section 57(o) of the Act (treating any registered investment company or series thereof as a BDC for this purpose).

Follow-On Investments[12] in an issuer in which a Regulated Fund and one or more other Regulated Funds and/or Affiliated Funds previously have invested.

12. Applicants propose that Follow-On Investments would be divided into two categories depending on whether the prior investment was a Co-Investment Transaction or a Pre-Boarding Investment.[13] If the Regulated Funds and Affiliated Funds had previously participated in a Co-Investment Transaction with respect to the issuer, then the terms and approval of the Follow-On Investment would be subject to the Standard Review Follow-Ons described in Condition 8. If the Regulated Funds and Affiliated Funds have not previously participated in a Co-Investment Transaction with respect to the issuer but hold a Pre-Boarding Investment, then the terms and approval of the Follow-On Investment would be subject to the Enhanced-Review Follow-Ons described in Condition 9. All Enhanced Review Follow-Ons require the approval of the Required Majority. For a given issuer, the participating Regulated Funds and Affiliated Funds would need to comply with the requirements of Enhanced-Review Follow-Ons only for the first Co-Investment Transaction. Subsequent Co-Investment Transactions with respect to the issuer would be governed by the requirements of Standard Review Follow-Ons.

13. A Regulated Fund would be permitted to invest in Standard Review Follow-Ons either with the approval of the Required Majority under Condition 8(c) or without Board approval under Condition 8(b) if it is (i) a Pro Rata Follow-On Investment[14] or (ii) a Non-Negotiated Follow-On Investment.[15] Applicants believe that these Pro Rata and Non-Negotiated Follow-On Investments do not present a significant opportunity for overreaching on the part of any Adviser and thus do not warrant the time or the attention of the Board. Pro Rata Follow-On Investments and Non-Negotiated Follow-On Investments remain subject to the Board's periodic review in accordance with Condition 10.

C. Dispositions

14. Applicants propose that Dispositions[16] would be divided into two categories. If the Regulated Funds and the Affiliated Funds holding investments in the issuer had previously participated in a Co-Investment Transaction with respect to the issuer, then the terms and approval of the Disposition would be subject to the Standard Review Dispositions described in Condition 6. If the Regulated Funds and Affiliated Funds have not previously participated in a Co-Investment Transaction with respect to the issuer but hold a Pre-Boarding Investment, then the terms and approval of the Disposition would be subject to the Enhanced Review Dispositions described in Condition 7. Subsequent Dispositions with respect to the same issuer would be governed by Condition 6 under the Standard Review Dispositions.[17]

15. A Regulated Fund may participate in a Standard Review Disposition either with the approval of the Required Majority under Condition 6(d) or without Board approval under Condition 6(c) if (i) the Disposition is a Pro Rata Disposition[18] or (ii) the securities are Tradable Securities[19] and the Disposition meets the other requirements of Condition 6(c)(ii). Pro Rata Dispositions and Dispositions of a Tradable Security remain subject to the Board's periodic review in accordance with Condition 10.

D. Delayed Settlement

16. Applicants represent that under the terms and Conditions of the application, all Regulated Funds and Affiliated Funds participating in a Co-Investment Transaction will invest at the same time, for the same price and with the same terms, conditions, class, registration rights and any other rights, so that none of them receives terms more favorable than any other. However, the settlement date for an Affiliated Fund in a Co-Investment Transaction may occur up to ten business days after the settlement date for the Regulated Fund, and vice versa. Nevertheless, in all cases, (i) the date on which the commitment of the Affiliated Funds and Regulated Funds is made will be the same even where the settlement date is not and (ii) the earliest settlement date and the latest settlement date of any Affiliated Fund or Regulated Fund participating in the

[12] ''Follow-On Investment'' means an additional investment in the same issuer, including, but not limited to, through the exercise of warrants, conversion privileges or other rights to purchase securities of the issuer.

[13] ''Pre-Boarding Investments'' are investments in an issuer held by a Regulated Fund as well as one or more Affiliated Funds and/or one or more other Regulated Funds that were acquired prior to participating in any Co-Investment Transaction in transactions: (i) In which the only term negotiated by or on behalf of such funds was price in reliance on one of the JT No-Action Letters (defined below); or (ii) occurring at least 90 days apart and without coordination between the Regulated Fund and any Affiliated Fund or other Regulated Fund.

[14] A ''Pro Rata Follow-On Investment'' is a Follow-On Investment (i) in which the participation of each Affiliated Fund and each Regulated Fund is proportionate to its outstanding investments in the issuer or security, as appropriate, immediately preceding the Follow-On Investment, and (ii) in the case of a Regulated Fund, a majority of the Board has approved the Regulated Fund's participation in the pro rata Follow-On Investments as being in the best interests of the Regulated Fund. The Regulated Fund's Board may refuse to approve, or at any time rescind, suspend or qualify, its approval of Pro Rata Follow-On Investments, in which case all subsequent Follow-On Investments will be submitted to the Regulated Fund's Eligible Trustees in accordance with Condition 8(c).

[15] A ''Non-Negotiated Follow-On Investment'' is a Follow-On Investment in which a Regulated Fund participates together with one or more Affiliated Funds and/or one or more other Regulated Funds (i) in which the only term negotiated by or on behalf of the funds is price and (ii) with respect to which, if the transaction were considered on its own, the funds would be entitled to rely on one of the JT No-Action Letters. ''JT No-Action Letters'' means SMC Capital, Inc., SEC No-Action Letter (pub. avail. Sept. 5, 1995) and Massachusetts Mutual Life Insurance Company, SEC No-Action Letter (pub. avail. June 7, 2000).

[16] ''Disposition'' means the sale, exchange or other disposition of an interest in a security of an issuer.

[17] However, with respect to an issuer, if a Regulated Fund's first Co-Investment Transaction is an Enhanced Review Disposition, and the Regulated Fund does not dispose of its entire position in the Enhanced Review Disposition, then before such Regulated Fund may complete its first Standard Review Follow-On in such issuer, the Eligible Trustees must review the proposed Follow-On Investment not only on a stand-alone basis but also in relation to the total economic exposure in such issuer (*i.e.,* in combination with the portion of the Pre-Boarding Investment not disposed of in the Enhanced Review Disposition), and the other terms of the investments. This additional review would be required because such findings would not have been required in connection with the prior Enhanced Review Disposition, but they would have been required had the first Co-Investment Transaction been an Enhanced Review Follow-On.

[18] A ''Pro Rata Disposition'' is a Disposition (i) in which the participation of each Affiliated Fund and each Regulated Fund is proportionate to its outstanding investment in the security subject to Disposition immediately preceding the Disposition; and (ii) in the case of a Regulated Fund, a majority of the Board has approved the Regulated Fund's participation in pro rata Dispositions as being in the best interests of the Regulated Fund. The Regulated Fund's Board may refuse to approve, or at any time rescind, suspend or qualify, its approval of Pro Rata Dispositions, in which case all subsequent Dispositions will be submitted to the Regulated Fund's Eligible Trustees.

[19] ''Tradable Security'' means a security that meets the following criteria at the time of Disposition: (i) It trades on a national securities exchange or designated offshore securities market as defined in rule 902(b) under the Securities Act; (ii) it is not subject to restrictive agreements with the issuer or other security holders; and (iii) it trades with sufficient volume and liquidity (findings as to which are documented by the Advisers to any Regulated Funds holding investments in the issuer and retained for the life of the Regulated Fund) to allow each Regulated Fund to dispose of its entire position remaining after the proposed Disposition within a short period of time not exceeding 30 days at approximately the value (as defined by section 2(a)(41) of the Act) at which the Regulated Fund has valued the investment.

transaction will occur within ten business days of each other.

E. Holders

17. Under Condition 15, if an Adviser, its principals, or any person controlling, controlled by, or under common control with the Adviser or its principals, and the Affiliated Funds (collectively, the ''Holders'') own in the aggregate more than 25 percent of the outstanding voting shares of a Regulated Fund (the ''Shares''), then the Holders will vote such Shares in the same percentages as the Regulated Fund's other shareholders (not including the Holders) when voting on matters specified in the Condition. Applicants believe that this Condition will ensure that the Independent Trustees will act independently in evaluating Co-Investment Transactions, because the ability of the Adviser or its principals to influence the Independent Trustees by a suggestion, explicit or implied, that the Independent Trustees can be removed will be limited significantly.

Applicants' Legal Analysis

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit participation by a registered investment company and an affiliated person in any ''joint enterprise or other joint arrangement or profit-sharing plan,'' as defined in the rule, without prior approval by the Commission by order upon application. Section 17(d) of the Act and rule 17d–1 under the Act are applicable to Regulated Funds that are registered closed-end investment companies.

2. Similarly, with regard to BDCs, section 57(a)(4) of the Act generally prohibits certain persons specified in section 57(b) from participating in joint transactions with the BDC or a company controlled by the BDC in contravention of rules as prescribed by the Commission. Section 57(i) of the Act provides that, until the Commission prescribes rules under section 57(a)(4), the Commission's rules under section 17(d) of the Act applicable to registered closed-end investment companies will be deemed to apply to transactions subject to section 57(a)(4). Because the Commission has not adopted any rules under section 57(a)(4), rule 17d–1 also applies to joint transactions with Regulated Funds that are BDCs.

3. Co-Investment Transactions are prohibited by either or both of rule 17d–1 and section 57(a)(4) without a prior exemptive order of the Commission to the extent that the Affiliated Funds and the Regulated Funds participating in such transactions fall within the category of persons described by rule 17d–1 and/or section 57(b), as applicable, vis-à-vis each participating Regulated Fund. Each of the participating Regulated Funds and Affiliated Funds may be deemed to be affiliated persons vis-à-vis a Regulated Fund within the meaning of section 2(a)(3) by reason of common control because (i) Portfolio Advisors manages, and may be deemed to control, the Existing Affiliated Funds and any other Affiliated Fund will be managed by, and may be deemed to be controlled by, an Adviser to Affiliated Funds; (ii) Portfolio Advisors is the investment adviser to, and may be deemed to control, the Fund and an Adviser to the Regulated Funds will be the investment adviser to, and may be deemed to control, any Future Regulated Fund; and (iii) the Advisers to Affiliated Funds and the Advisers to Regulated Funds are under common control. Thus, each of the Affiliated Funds could be deemed to be a person related to the Regulated Funds in a manner described by section 57(b) and related to the other Regulated Funds in a manner described by rule 17d–1; and therefore the prohibitions of rule 17d–1 and section 57(a)(4) would apply respectively to prohibit the Affiliated Funds from participating in Co-Investment Transactions with the Regulated Funds.

4. Because the Portfolio Advisors Proprietary Accounts are controlled by the Adviser or its affiliates and, therefore, may be under common control with the Fund, any future Advisers, and any Future Regulated Funds, the Portfolio Advisors Proprietary Accounts could be deemed to be persons related to the Regulated Funds (or a company controlled by the Regulated Funds) in a manner described by section 57(b) and also prohibited from participating in the co-investment program. Each Regulated Fund would also be related to each other Regulated Fund in a manner described by section 57(b) or rule 17d–1, as applicable, and thus prohibited from participating in Co-Investment Transactions with each other.

5. In passing upon applications under rule 17d–1, the Commission considers whether a company's participation in the joint transaction is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

6. Applicants state that in the absence of the requested relief, in many circumstances the Regulated Funds would be limited in their ability to participate in attractive and appropriate investment opportunities. Applicants state that, as required by rule 17d–1(b), the Conditions ensure that the terms on which Co-Investment Transactions may be made will be consistent with the participation of the Regulated Funds being on a basis that it is neither different from nor less advantageous than other participants, thus protecting the equity holders of any participant from being disadvantaged. Applicants further state that the Conditions ensure that all Co-Investment Transactions are reasonable and fair to the Regulated Funds and their shareholders and do not involve overreaching by any person concerned, including the Advisers. Applicants state that the Regulated Funds' participation in the Co-Investment Transactions in accordance with the Conditions will be consistent with the provisions, policies, and purposes of the Act and would be done in a manner that is not different from, or less advantageous than, that of other participants.

Applicants' Conditions

Applicants agree that the Order will be subject to the following conditions:

1. *Identification and Referral of Potential Co-Investment Transactions.*

(a) The Advisers will establish, maintain and implement policies and procedures reasonably designed to ensure that each Adviser is promptly notified of all Potential Co-Investment Transactions that fall within the then-current Objectives and Strategies and Board-Established Criteria of any Regulated Fund the Adviser manages.

(b) When an Adviser to a Regulated Fund is notified of a Potential Co-Investment Transaction under Condition 1(a), the Adviser will make an independent determination of the appropriateness of the investment for the Regulated Fund in light of the Regulated Fund's then-current circumstances.

2. *Board Approvals of Co-Investment Transactions.*

(a) If an Adviser deems a Regulated Fund's participation in any Potential Co-Investment Transaction to be appropriate for the Regulated Fund, it will then determine an appropriate level of investment for the Regulated Fund.

(b) If the aggregate amount recommended by the Advisers to be invested in the Potential Co-Investment Transaction by the participating Regulated Funds and any participating Affiliated Funds, collectively, exceeds the amount of the investment opportunity, the investment opportunity will be allocated among them pro rata based on the size of the Internal Orders, as described in Section III.A.1.b. of the application. Each Adviser to a

participating Regulated Fund will promptly notify and provide the Eligible Trustees with information concerning the Affiliated Funds' and Regulated Funds' order sizes to assist the Eligible Trustees with their review of the applicable Regulated Fund's investments for compliance with these Conditions.

(c) After making the determinations required in Condition 1(b) above, each Adviser to a participating Regulated Fund will distribute written information concerning the Potential Co-Investment Transaction (including the amount proposed to be invested by each participating Regulated Fund and each participating Affiliated Fund) to the Eligible Trustees of its participating Regulated Fund(s) for their consideration. A Regulated Fund will enter into a Co-Investment Transaction with one or more other Regulated Funds or the Affiliated Funds only if, prior to the Regulated Fund's participation in the Potential Co-Investment Transaction, a Required Majority concludes that:

(i) The terms of the transaction, including the consideration to be paid, are reasonable and fair to the Regulated Fund and its shareholders and do not involve overreaching in respect of the Regulated Fund or its shareholders on the part of any person concerned;

(ii) the transaction is consistent with:

(A) The interests of the Regulated Fund's shareholders; and

(B) the Regulated Fund's then-current Objectives and Strategies;

(iii) the investment by any other Regulated Fund(s) or Affiliated Fund(s) would not disadvantage the Regulated Fund, and participation by the Regulated Fund would not be on a basis different from, or less advantageous than, that of any other Regulated Fund(s) or Affiliated Fund(s) participating in the transaction; provided that the Required Majority shall not be prohibited from reaching the conclusions required by this Condition 2(c)(iii) if:

(A) The settlement date for another Regulated Fund or an Affiliated Fund in a Co-Investment Transaction is later than the settlement date for the Regulated Fund by no more than ten business days or earlier than the settlement date for the Regulated Fund by no more than ten business days, in either case, so long as: (x) The date on which the commitment of the Affiliated Fund and Regulated Funds is made is the same; and (y) the earliest settlement date and the latest settlement date of any Affiliated Fund or Regulated Fund participating in the transaction will occur within ten business days of each other; or

(B) any other Regulated Fund or Affiliated Fund, but not the Regulated Fund itself, gains the right to nominate a director for election to a portfolio company's board of directors, the right to have a board observer or any similar right to participate in the governance or management of the portfolio company so long as: (x) The Eligible Trustees will have the right to ratify the selection of such director or board observer, if any; (y) the Adviser agrees to, and does, provide periodic reports to the Regulated Fund's Board with respect to the actions of such director or the information received by such board observer or obtained through the exercise of any similar right to participate in the governance or management of the portfolio company; and (z) any fees or other compensation that any other Regulated Fund or Affiliated Fund or any affiliated person of any other Regulated Fund or Affiliated Fund receives in connection with the right of one or more Regulated Funds or Affiliated Funds to nominate a director or appoint a board observer or otherwise to participate in the governance or management of the portfolio company will be shared proportionately among any participating Affiliated Funds (who may, in turn, share their portion with their affiliated persons) and any participating Regulated Fund(s) in accordance with the amount of each such party's investment; and

(iv) the proposed investment by the Regulated Fund will not involve compensation, remuneration or a direct or indirect [20] financial benefit to the Advisers, any other Regulated Fund, the Affiliated Funds or any affiliated person of any of them (other than the parties to the Co-Investment Transaction), except (A) to the extent permitted by Condition 14, (B) to the extent permitted by section 17(e) or 57(k), as applicable, (C) indirectly, as a result of an interest in the securities issued by one of the parties to the Co-Investment Transaction, or (D) in the case of fees or other compensation described in Condition 2(c)(iii)(B)(z).

3. *Right to Decline.* Each Regulated Fund has the right to decline to participate in any Potential Co-Investment Transaction or to invest less than the amount proposed.

4. *General Limitation.* Except for Follow-On Investments made in accordance with Conditions 8 and 9 below,[21] a Regulated Fund will not invest in reliance on the Order in any issuer in which a Related Party has an investment.[22]

5. *Same Terms and Conditions.* A Regulated Fund will not participate in any Potential Co-Investment Transaction unless (i) the terms, conditions, price, class of securities to be purchased, date on which the commitment is entered into and registration rights (if any) will be the same for each participating Regulated Fund and Affiliated Fund and (ii) the earliest settlement date and the latest settlement date of any participating Regulated Fund or Affiliated Fund will occur as close in time as practicable and in no event more than ten business days apart. The grant to one or more Regulated Funds or Affiliated Funds, but not the respective Regulated Fund, of the right to nominate a director for election to a portfolio company's board of directors, the right to have an observer on the board of directors or similar rights to participate in the governance or management of the portfolio company will not be interpreted so as to violate this Condition 5, if Condition 2(c)(iii)(B) is met.

6. *Standard Review Dispositions.*

(a) *General.* If any Regulated Fund or Affiliated Fund elects to sell, exchange or otherwise dispose of an interest in a security and one or more Regulated Funds and Affiliated Funds have previously participated in a Co-Investment Transaction with respect to the issuer, then:

(i) The Adviser to such Regulated Fund or Affiliated Fund [23] will notify each Regulated Fund that holds an investment in the issuer of the proposed

[20] For example, procuring the Regulated Fund's investment in a Potential Co-Investment Transaction to permit an affiliate to complete or obtain better terms in a separate transaction would constitute an indirect financial benefit.

[21] This exception applies only to Follow-On Investments by a Regulated Fund in issuers in which that Regulated Fund already holds investments.

[22] ''Related Party'' means (i) any Close Affiliate and (ii) in respect of matters as to which any Adviser has knowledge, any Remote Affiliate. ''Close Affiliate'' means the Advisers, the Regulated Funds, the Affiliated Funds and any other person described in section 57(b) (after giving effect to rule 57b–1) in respect of any Regulated Fund (treating any registered investment company or series thereof as a BDC for this purpose) except for limited partners included solely by reason of the reference in section 57(b) to section 2(a)(3)(D). ''Remote Affiliate'' means any person described in section 57(e) in respect of any Regulated Fund (treating any registered investment company or series thereof as a BDC for this purpose) and any limited partner holding 5% or more of the relevant limited partner interests that would be a Close Affiliate but for the exclusion in that definition.

[23] Any Portfolio Advisors Proprietary Account that is not advised by an Adviser is itself deemed to be an Adviser for purposes of Conditions 6(a)(i), 7(a)(i), 8(a)(i), and 9(a)(i).

Disposition at the earliest practical time; and

(ii) the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to participation by such Regulated Fund in the Disposition.

(b) *Same Terms and Conditions.* Each Regulated Fund will have the right to participate in such Disposition on a proportionate basis, at the same price and on the same terms and conditions as those applicable to the Affiliated Funds and any other Regulated Fund.

(c) *No Board Approval Required.* A Regulated Fund may participate in such a Disposition without obtaining prior approval of the Required Majority if:

(i) (A) The participation of each Regulated Fund and Affiliated Fund in such Disposition is proportionate to its then-current holding of the security (or securities) of the issuer that is (or are) the subject of the Disposition;[24] (B) the Board of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in such Dispositions on a pro rata basis (as described in greater detail in the application); and (C) the Board of the Regulated Fund is provided on a quarterly basis with a list of all Dispositions made in accordance with this Condition; or

(ii) each security is a Tradable Security and (A) the Disposition is not to the issuer or any affiliated person of the issuer; and (B) the security is sold for cash in a transaction in which the only term negotiated by or on behalf of the participating Regulated Funds and Affiliated Funds is price.

(d) *Standard Board Approval.* In all other cases, the Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Trustees and the Regulated Fund will participate in such Disposition solely to the extent that a Required Majority determines that it is in the Regulated Fund's best interests.

7. *Enhanced Review Dispositions.*

(a) *General.* If any Regulated Fund or Affiliated Fund elects to sell, exchange or otherwise dispose of a Pre-Boarding Investment in a Potential Co-Investment Transaction and the Regulated Funds and Affiliated Funds have not previously participated in a Co-Investment Transaction with respect to the issuer:

(i) The Adviser to such Regulated Fund or Affiliated Fund will notify each Regulated Fund that holds an investment in the issuer of the proposed Disposition at the earliest practical time;

(ii) the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to participation by such Regulated Fund in the Disposition; and

(iii) the Advisers will provide to the Board of each Regulated Fund that holds an investment in the issuer all information relating to the existing investments in the issuer of the Regulated Funds and Affiliated Fund, including the terms of such investments and how they were made, that is necessary for the Required Majority to make the findings required by this Condition.

(b) *Enhanced Board Approval.* The Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Trustees, and the Regulated Fund will participate in such Disposition solely to the extent that a Required Majority determines that:

(i) The Disposition complies with Condition 2(c)(i), (ii), (iii)(A), and (iv); and

(ii) the making and holding of the Pre-Boarding Investments were not prohibited by section 57 or rule 17d–1, as applicable, and records the basis for the finding in the Board minutes.

(c) *Additional Requirements.* The Disposition may only be completed in reliance on the Order if:

(i) *Same Terms and Conditions.* Each Regulated Fund has the right to participate in such Disposition on a proportionate basis, at the same price and on the same terms and conditions as those applicable to the Affiliated Funds and any other Regulated Fund;

(ii) *Original Investments.* All of the Affiliated Funds' and Regulated Funds' investments in the issuer are Pre-Boarding Investments;

(iii) *Advice of counsel.* Independent counsel to the Board advises that the making and holding of the investments in the Pre-Boarding Investments were not prohibited by section 57 (as modified by rule 57b–1) or rule 17d–1, as applicable;

(iv) *Multiple Classes of Securities.* All Regulated Funds and Affiliated Funds that hold Pre-Boarding Investments in the issuer immediately before the time of completion of the Co-Investment Transaction hold the same security or securities of the issuer. For the purpose of determining whether the Regulated Funds and Affiliated Funds hold the same security or securities, they may disregard any security held by some but not all of them if, prior to relying on the Order, the Required Majority is presented with all information necessary to make a finding, and finds, that: (x) Any Regulated Fund's or Affiliated Fund's holding of a different class of securities (including for this purpose a security with a different maturity date) is immaterial[25] in amount, including immaterial relative to the size of the issuer; and (y) the Board records the basis for any such finding in its minutes. In addition, securities that differ only in respect of issuance date, currency, or denominations may be treated as the same security; and

(v) *No control.* The Affiliated Funds, the other Regulated Funds and their affiliated persons (within the meaning of section 2(a)(3)(C) of the Act), individually or in the aggregate, do not control the issuer of the securities (within the meaning of section 2(a)(9) of the Act).

8. *Standard Review Follow-Ons.*

(a) *General.* If any Regulated Fund or Affiliated Fund desires to make a Follow-On Investment in an issuer and the Regulated Funds and Affiliated Funds holding investments in the issuer previously participated in a Co-Investment Transaction with respect to the issuer:

(i) The Adviser to each such Regulated Fund or Affiliated Fund will notify each Regulated Fund that holds securities of the portfolio company of the proposed transaction at the earliest practical time; and

(ii) the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to the proposed participation, including the amount of the proposed investment, by such Regulated Fund.

(b) *No Board Approval Required.* A Regulated Fund may participate in the Follow-On Investment without obtaining prior approval of the Required Majority if:

(i) (A) The proposed participation of each Regulated Fund and each Affiliated Fund in such investment is proportionate to its outstanding investments in the issuer or the security at issue, as appropriate,[26] immediately

[24] In the case of any Disposition, proportionality will be measured by each participating Regulated Fund's and Affiliated Fund's outstanding investment in the security in question immediately preceding the Disposition.

[25] In determining whether a holding is ''immaterial'' for purposes of the Order, the Required Majority will consider whether the nature and extent of the interest in the transaction or arrangement is sufficiently small that a reasonable person would not believe that the interest affected the determination of whether to enter into the transaction or arrangement or the terms of the transaction or arrangement.

[26] To the extent that a Follow-On Investment opportunity is in a security or arises in respect of a security held by the participating Regulated Funds and any Affiliated Fund, proportionality will be measured by each participating Regulated Fund's and Affiliated Fund's outstanding investment in the security in question immediately preceding the Follow-On Investment using the most recent available valuation thereof. To the extent that a

preceding the Follow-On Investment; and (B) the Board of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in Follow-On Investments on a pro rata basis (as described in greater detail in the application); or

(ii) it is a Non-Negotiated Follow-On Investment.

(c) *Standard Board Approval.* In all other cases, the Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Trustees and the Regulated Fund will participate in such Follow-On Investment solely to the extent that a Required Majority makes the determinations set forth in Condition 2(c). If the only previous Co-Investment Transaction with respect to the issuer was an Enhanced Review Disposition the Eligible Trustees must complete this review of the proposed Follow-On Investment both on a stand-alone basis and together with the Pre-Boarding Investments in relation to the total economic exposure and other terms of the investment.

(d) *Allocation.* If, with respect to any such Follow-On Investment:

(i) The amount of the opportunity proposed to be made available to any Regulated Fund is not based on the Regulated Funds' and the Affiliated Funds' outstanding investments in the issuer or the security at issue, as appropriate, immediately preceding the Follow-On Investment; and

(ii) the aggregate amount recommended by the Advisers to be invested in the Follow-On Investment by the participating Regulated Funds and any participating Affiliated Funds, collectively, exceeds the amount of the investment opportunity, then the Follow-On Investment opportunity will be allocated among them *pro rata* based on the size of the Internal Orders, as described in Section III.A.1.b. of the application.

(e) *Other Conditions.* The acquisition of Follow-On Investments as permitted by this Condition will be considered a Co-Investment Transaction for all purposes and subject to the other Conditions set forth in the application.

9. *Enhanced Review Follow-Ons.*

(a) *General.* If any Regulated Fund or Affiliated Fund desires to make a Follow-On Investment in an issuer that is a Potential Co-Investment Transaction and the Regulated Funds and any Affiliated Funds holding investments in the issuer have not previously participated in a Co-Investment Transaction with respect to the issuer:

(i) The Adviser to each such Regulated Fund or Affiliated Fund will notify each Regulated Fund that holds securities of the portfolio company of the proposed transaction at the earliest practical time;

(ii) the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to the proposed participation, including the amount of the proposed investment, by such Regulated Fund; and

(iii) the Advisers will provide to the Board of each Regulated Fund that holds an investment in the issuer all information relating to the existing investments in the issuer of the Regulated Funds and Affiliated Funds, including the terms of such investments and how they were made, that is necessary for the Required Majority to make the findings required by this Condition.

(b) *Enhanced Board Approval.* The Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Trustees, and the Regulated Fund will participate in such Follow-On Investment solely to the extent that a Required Majority reviews the proposed Follow-On Investment both on a stand-alone basis and together with the Pre-Boarding Investments in relation to the total economic exposure and other terms and makes the determinations set forth in Condition 2(c). In addition, the Follow-On Investment may only be completed in reliance on the Order if the Required Majority of each participating Regulated Fund determines that the making and holding of the Pre-Boarding Investments were not prohibited by section 57 (as modified by rule 57b–1) or rule 17d–1, as applicable. The basis for the Board's findings will be recorded in its minutes.

(c) *Additional Requirements.* The Follow-On Investment may only be completed in reliance on the Order if:

(i) *Original Investments.* All of the Affiliated Funds' and Regulated Funds' investments in the issuer are Pre-Boarding Investments;

(ii) *Advice of counsel.* Independent counsel to the Board advises that the making and holding of the investments in the Pre-Boarding Investments were not prohibited by section 57 (as modified by rule 57b–1) or rule 17d–1, as applicable;

(iii) *Multiple Classes of Securities.* All Regulated Funds and Affiliated Funds that hold Pre-Boarding Investments in the issuer immediately before the time of completion of the Co-Investment Transaction hold the same security or securities of the issuer. For the purpose of determining whether the Regulated Funds and Affiliated Funds hold the same security or securities, they may disregard any security held by some but not all of them if, prior to relying on the Order, the Required Majority is presented with all information necessary to make a finding, and finds, that: (x) Any Regulated Fund's or Affiliated Fund's holding of a different class of securities (including for this purpose a security with a different maturity date) is immaterial in amount, including immaterial relative to the size of the issuer; and (y) the Board records the basis for any such finding in its minutes. In addition, securities that differ only in respect of issuance date, currency, or denominations may be treated as the same security; and

(iv) *No control.* The Affiliated Funds, the other Regulated Funds and their affiliated persons (within the meaning of section 2(a)(3)(C) of the Act), individually or in the aggregate, do not control the issuer of the securities (within the meaning of section 2(a)(9) of the Act).

(d) *Allocation.* If, with respect to any such Follow-On Investment:

(i) The amount of the opportunity proposed to be made available to any Regulated Fund is not based on the Regulated Funds' and the Affiliated Funds' outstanding investments in the issuer or the security at issue, as appropriate, immediately preceding the Follow-On Investment; and

(ii) the aggregate amount recommended by the Advisers to be invested in the Follow-On Investment by the participating Regulated Funds and any participating Affiliated Funds, collectively, exceeds the amount of the investment opportunity, then the Follow-On Investment opportunity will be allocated among them pro rata based on the size of the Internal Orders, as described in Section III.A.1.b. of the application.

(e) *Other Conditions.* The acquisition of Follow-On Investments as permitted by this Condition will be considered a Co-Investment Transaction for all purposes and subject to the other Conditions set forth in the application.

10. *Board Reporting, Compliance and Annual Re-Approval.*

(a) Each Adviser to a Regulated Fund will present to the Board of each Regulated Fund, on a quarterly basis, and at such other times as the Board

Follow-On Investment opportunity relates to an opportunity to invest in a security that is not in respect of any security held by any of the participating Regulated Funds or any Affiliated Fund, proportionality will be measured by each participating Regulated Fund's and Affiliated Fund's outstanding investment in the issuer immediately preceding the Follow-On Investment using the most recent available valuation thereof.

may request, (i) a record of all investments in Potential Co-Investment Transactions made by any of the other Regulated Funds or any Affiliated Funds during the preceding quarter that fell within the Regulated Fund's then-current Objectives and Strategies and Board-Established Criteria that were not made available to the Regulated Fund, and an explanation of why such investment opportunities were not made available to the Regulated Fund; (ii) a record of all Follow-On Investments in and Dispositions of investments in any issuer in which the Regulated Fund holds any investments by any Affiliated Fund or other Regulated Fund during the prior quarter; and (iii) all information concerning Potential Co-Investment Transactions and Co-Investment Transactions, including investments made by other Regulated Funds or any Affiliated Funds that the Regulated Fund considered but declined to participate in, so that the Independent Trustees, may determine whether all Potential Co-Investment Transactions and Co-Investment Transactions during the preceding quarter, including those investments that the Regulated Fund considered but declined to participate in, comply with the Conditions.

(b) All information presented to the Regulated Fund's Board pursuant to this Condition will be kept for the life of the Regulated Fund and at least two years thereafter, and will be subject to examination by the Commission and its staff.

(c) Each Regulated Fund's chief compliance officer, as defined in rule 38a–1(a)(4), will prepare an annual report for its Board each year that evaluates (and documents the basis of that evaluation) the Regulated Fund's compliance with the terms and Conditions of the application and the procedures established to achieve such compliance.

(d) The Independent Trustees will consider at least annually whether continued participation in new and existing Co-Investment Transactions is in the Regulated Fund's best interests.

11. *Record Keeping.* Each Regulated Fund will maintain the records required by section 57(f)(3) of the Act as if each of the Regulated Funds were a BDC and each of the investments permitted under these Conditions were approved by the Required Majority under section 57(f).

12. *Trustee Independence.* No Independent Trustee of a Regulated Fund will also be a director, general partner, managing member or principal, or otherwise be an ''affiliated person'' (as defined in the Act) of any Affiliated Fund.

13. *Expenses.* The expenses, if any, associated with acquiring, holding or disposing of any securities acquired in a Co-Investment Transaction (including, without limitation, the expenses of the distribution of any such securities registered for sale under the Securities Act) will, to the extent not payable by the Advisers under their respective advisory agreements with the Regulated Funds and the Affiliated Funds, be shared by the Regulated Funds and any participating Affiliated Funds in proportion to the relative amounts of the securities held or being acquired or disposed of, as the case may be.

14. *Transaction Fees.*[27] Any transaction fee (including break-up, structuring, monitoring or commitment fees but excluding brokerage or underwriting compensation permitted by section 17(e) or 57(k)) received in connection with any Co-Investment Transaction will be distributed to the participants on a pro rata basis based on the amounts they invested or committed, as the case may be, in such Co-Investment Transaction. If any transaction fee is to be held by an Adviser pending consummation of the transaction, the fee will be deposited into an account maintained by an Adviser at a bank or banks having the qualifications prescribed in section 26(a)(1), and the account will earn a competitive rate of interest that will also be divided pro rata among the participants. None of the Adviser, the Affiliated Funds, the other Regulated Funds or any affiliated person of the Affiliated Funds or the Regulated Funds will receive any additional compensation or remuneration of any kind as a result of or in connection with a Co-Investment Transaction other than (i) in the case of the Regulated Funds and the Affiliated Funds, the pro rata transaction fees described above and fees or other compensation described in Condition 2(c)(iii)(B)(z), (ii) brokerage or underwriting compensation permitted by section 17(e) or 57(k) or (iii) in the case of the Adviser, investment advisory compensation paid in accordance with investment advisory agreements between the applicable Regulated Fund(s) or Affiliated Fund(s) and its Adviser.

15. *Independence.* If the Holders own in the aggregate more than 25 percent of the Shares of a Regulated Fund, then the Holders will vote such Shares in the same percentages as the Regulated Fund's other shareholders (not including the Holders) when voting on (1) the election of directors; (2) the removal of one or more directors; or (3) any other matter under either the Act or applicable State law affecting the Board's composition, size or manner of election.

For the Commission, by the Division of Investment Management, under delegated authority.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–25628 Filed 11–23–21; 8:45 am]

BILLING CODE 8011–01–P

[27] Applicants are not requesting and the Commission is not providing any relief for transaction fees received in connection with any Co-Investment Transaction.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93612; File No. SR–OCC–2021–012]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Correct an Inadvertent Omission in a Prior Proposed Rule Change Concerning OCC's Schedule of Fees

November 18, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 8, 2021, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. OCC filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii)[3] of the Act and Rule 19b–4(f)(2)[4] thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change by OCC would correct an inadvertent omission in OCC's schedule of fees that was the subject of a prior rule filing. OCC's schedule of fees is included as Exhibit 5 to File No. SR–OCC–2021–012. Material proposed to be added to OCC's schedule of fees as currently in effect is underlined and material proposed to be deleted is marked in strikethrough text.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

All capitalized terms not defined herein have the same meaning as set forth in the OCC By-Laws and Rules.[5]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The purpose of this proposed rule change is to revise OCC's schedule of fees to correct an inadvertent omission in the prior rule filing that established a fee holiday for the period from November 1, 2021, and ending December 31, 2021.[6] Based on OCC's financial position as a result of historic contract volume, and consistent with OCC's Capital Management Policy, that prior filing reduced its per contract and per trade clearing fees to $0 for the last two months of 2021. However, through an inadvertent oversight, two line items in the schedule of fees related to clearing fees were not reduced accordingly: (1) The minimum monthly clearing fee of $200 and (2) a fee of $0.02 per side for linkage transactions, capped at $55 per trade per side.[7] OCC is now proposing to correct the schedule of fees set forth in Exhibit 5 to File No. SR–OCC–2021–012 to reflect that OCC will not collect these fees during the fee holiday.

Clearing fees effective June 1, 2021		Proposed fee holiday from November 1, 2021 to December 31, 2021	
Linkage per side	* $0.02	Linkage per side	$0.00
Minimum Monthly Clearing Fee	200.00	Minimum Monthly Clearing Fee	0.00

* A Linkage transaction that includes more than 2,750 contracts will be charged a flat fee of $55.00 per trade per side.

The listing of the fees in the schedule of fees would be reordered to group these two fees with the other clearing fees that are subject to the fee holiday. Like the changes to OCC's clearing fees set forth in File No. SR–OCC–2021–009, the linkage per side fee and the minimum monthly clearing fee will revert to the fee schedule in effect before November 1, 2021 and OCC will remove the fee holiday from its schedule of fees effective the first trading day of 2022.

No fees for transactions occurring within the fee holiday period have been collected because clearing fees are due to OCC the month after the fees are incurred. OCC will not collect fees for transactions that occurred between November 1, 2021 through the first date it may implement the corrected fee schedule after completing all regulatory actions necessary to make the proposed corrections.

(2) Statutory Basis

Section 17A(b)(3)(D) of the Act[8] requires that the rules of a clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges among its participants. OCC believes that the proposed correction of inadvertent omissions to OCC's schedule of fees would facilitate the equitable allocation of fees among its participants because it would eliminate inadvertent discrepancies in the application of the fee holiday that might otherwise impact certain market participants differently depending on the business they conduct through OCC. The corrected fees would be equally applicable to all market participants. As a result, OCC believes that the proposed corrections would provide for the equitable allocation of reasonable fees in accordance with Section 17A(b)(3)(D) of the Act.[9]

In addition, SEC Rule 17Ad–22(e)(23)(ii)[10] provides that a covered clearing agency must establish, implement, maintain and enforce written policies and procedures reasonably designed to provide sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in the covered clearing agency. By correcting OCC's schedule of fees consistent with the intent of the fee holiday, OCC would eliminate ambiguity that might otherwise persist about whether OCC intends to charge the minimum monthly clearing fee and the fee for linkage transactions while the fee holiday is in effect, which it does not. Accordingly, OCC believes that the proposed corrections are reasonably designed to provide participants sufficient information to evaluate OCC's fees, in accordance with SEC Rule 17Ad–22(e)(23)(ii).[11]

The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

(B) Clearing Agency's Statement on Burden on Competition

Section 17A(b)(3)(I) of the Act[12] requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. OCC does not believe that the proposed rule change would have any impact or impose a burden on competition. Although this proposed rule change affects clearing members, their customers, and the markets that OCC serves, OCC believes that the proposed rule change would not disadvantage or favor any particular user of OCC's services in relationship to another user because the proposed fee holiday with respect to these fees applies equally to all users of OCC. Accordingly, OCC does not believe that the proposed rule change would have

[5] OCC's By-Laws and Rules can be found on OCC's public website: *https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules.*

[6] *See* Exchange Act Release No. 93195 (Sept. 29, 2021), 86 FR 55039 (Oct. 5, 2021) (File No. SR–OCC–2021–009).

[7] The linkage fee was added to OCC's schedule of fees in 2012 so that OCC could, for the purposes of charging a clearing fee, treat routing trades executed in accordance with the Options Order Protection and Locked/Crossed Market Plan the same as market maker/specialist scratch trades, which were subject to a reduced ''scratch fee.'' *See* Exchange Act Release No. 68025 (Oct. 10, 2012), 77 FR 63398 (Oct. 16, 2012) (File No. SR–OCC–2012–18). In 2016, OCC simplified its schedule of fees by, among other things, eliminating the scratch fee but retained the linkage per side fee. *See* Exchange Act Release No. 77336 (Mar. 10, 2016), 81 FR 14153 (Mar. 16, 2016) (File No. SR–OCC–2016–005).

[8] 15 U.S.C. 78q–1(b)(3)(D).

[9] 15 U.S.C. 78q–1(b)(3)(D).

[10] 17 CFR 240.17AD–22(e)(23)(ii).

[11] 17 CFR 240.17AD–22(e)(23)(ii).

[12] 15 U.S.C. 78q–1(b)(3)(I).

any impact or impose a burden on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A)(ii) [13] of the Act, and Rule 19b–4(f)(2) thereunder,[14] the proposed rule change is filed for immediate effectiveness as it constitutes a change in fees charged to OCC's members. 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. The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.[15]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–OCC–2021–012 on the subject line.

Paper Comments

- Send paper comments in triplicate to Vanessa Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–OCC–2021–012. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OCC.

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–OCC–2021–012 and should be submitted on or before December 15, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–25624 Filed 11–23–21; 8:45 am]

BILLING CODE 8011–01–P

[13] 15 U.S.C. 78s(b)(3)(A)(ii).

[14] 17 CFR 240.19b–4(f)(2).

[15] Notwithstanding its immediate effectiveness, implementation of this rule change will be delayed until this change is deemed certified under CFTC Regulation 40.6.

[16] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[License No. 03/03–0283]

Conflicts of Interest Exemption; Boathouse Capital III, L.P.

Notice is hereby given that Boathouse Capital III, L.P., 353 W Lancaster Avenue, Suite 200, Wayne, PA 19087, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small business concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). Boathouse Capital III, L.P. is seeking a written exemption from SBA for a proposed financing to Splashlight Holding, LLC, 75 Varick Street, 3rd Floor, New York, NY 10013.

The financing is brought within the purview of § 107.730(a) of the Regulations because Splashlight Holding, LLC. is an Associate of Boathouse Capital III, L.P. because Associate Boathouse Capital II, L.P. owns a greater than ten percent interest in Splashlight Holding, LLC, therefore this transaction is considered *Financing which constitute conflicts of interest* requiring SBA's prior written exemption.

Notice is hereby given that any interested person may submit written comments on this transaction within fifteen days of the date of this publication to the Associate Administrator, Office of Investment and Innovation, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416.

United States Small Business Administration.

Bailey G. DeVries,

Associate Administrator, Office of Investment and Innovation.

[FR Doc. 2021–25696 Filed 11–23–21; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

[License No. 04/04–0333]

Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest; Five Points Mezzanine Fund III, L.P.

Notice is hereby given that Five Points Mezzanine Fund III, L.P., 101 N. Cherry Street, Winston-Salem, NC 27101, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the U.S. Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). Five Points Mezzanine Fund III, L.P. proposes to purchase its pro rata share of a recent debt financing from BMO Harris Bank, N.A. in Welcome Dairy Holdings, LLC, 225567 Silver Maple Lane, Colby, WI.

The financing is brought within the purview of § 107.730(a) and (d) of the Regulations because RCP Advisors, an Associate of Five Points Mezzanine Fund III, L.P., indirectly owns more than ten percent of Welcome Dairy Holdings, LLC, and therefore this transaction is considered a financing of an Associate requiring prior SBA approval.

Notice is hereby given that any interested person may submit written comments on the transaction, within fifteen days of the date of this publication, to the Associate Administrator for Investment and Innovation, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416.

Bailey DeVries,

Associate Administrator, Office of Investment and Innovation.

[FR Doc. 2021–25712 Filed 11–23–21; 8:45 am]

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SURFACE TRANSPORTATION BOARD

[Docket No. FD 36562]

BNSF Railway Company—Trackage Rights Exemption—Union Pacific Railroad Company

BNSF Railway Company (BNSF), a Class I rail carrier, has filed a verified notice of exemption under 49 CFR 1180.2(d)(7) for overhead trackage rights over approximately 68 miles of rail line owned by Union Pacific Railroad Company (UP) between Attalia, Wash., and Riparia, Wash.; specifically, from UP Ayer Sub milepost 215 to milepost 269 and 14 miles over the Riparia Industrial Lead (the Line).

BNSF and UP have entered into a written trackage rights agreement that grants BNSF trackage rights over the Line, over which BNSF and its predecessors have operated since 1967.[1]

The transaction may be consummated on December 9, 2021, the effective date of the exemption (30 days after the verified notice was filed).

As a condition to this exemption, any employees affected by the acquisition of the trackage rights will be protected by the conditions imposed in *Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc.,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway—Lease & Operate—California Western Railroad,* 360 I.C.C. 653 (1980).

If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed by December 2, 2021 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36562, should be filed with the Surface Transportation Board via e-filing on the Board's website. In addition, a copy of each pleading must be served on BNSF's representative, Peter W. Denton, Steptoe & Johnson LLP, 1330 Connecticut Avenue NW, Washington, DC 20036.

According to BNSF, this action is categorically excluded from environmental review under 49 CFR 1105.6(c)(3) and from historic preservation reporting requirements under 49 CFR 1105.8(b)(3).

Board decisions and notices are available at *www.stb.gov.*

Decided: November 19, 2021.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Brendetta Jones,

Clearance Clerk.

[FR Doc. 2021–25651 Filed 11–23–21; 8:45 am]

BILLING CODE 4915–01–P

[1] A redacted version of the trackage rights agreement between UP and BNSF was filed with the verified notice. An unredacted version of the agreement was submitted to the Board under seal concurrently with a motion for protective order, which is addressed in a separate decision.

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36563]

BNSF Railway Company—Trackage Rights Exemption—Union Pacific Railroad Company

BNSF Railway Company (BNSF) has filed a verified notice of exemption under 49 CFR 1180.2(d)(7) to acquire overhead trackage rights from Union Pacific Railroad Company (UP). BNSF states that UP, pursuant to a written trackage rights agreement, has granted BNSF overhead trackage rights over approximately 0.672 miles of UP's rail line between milepost 444.5, at or near Congo, Mo., on UP's River Subdivision, and milepost 445.2, at or near Kansas City Terminal Railway's Rock Creek Junction Connection in Kansas City, Mo. (the Line).[1] BNSF states that the purpose of these trackage rights is to permit BNSF to operate through trains over the Line.

The earliest this transaction may be consummated is December 9, 2021, the effective date of the exemption (30 days after the verified notice was filed).

As a condition to this exemption, any employees affected by the acquisition of the trackage rights will be protected by the conditions imposed in *Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc.,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway—Lease & Operate—California Western Railroad,* 360 I.C.C. 653 (1980).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed by December 2, 2021 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36563, should be filed with the Surface Transportation Board via e-filing on the Board's website. In addition, a copy of each pleading must be served on BNSF's representative, Peter W. Denton, Steptoe & Johnson LLP, 1330 Connecticut Ave, NW, Washington, DC 20036.

According to BNSF, this action is categorically excluded from environmental review under 49 CFR 1105.6(c)(3) and from historic preservation reporting requirements under 49 CFR 1105.8(b)(3).

Board decisions and notices are available at *www.stb.gov.*

Decided: November 18, 2021.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Regena Smith-Bernard,

Clearance Clerk.

[FR Doc. 2021–25643 Filed 11–23–21; 8:45 am]

BILLING CODE 4915–01–P

[1] A redacted copy of the agreement, dated October 27, 2021, is attached to the verified notice. An unredacted copy has been filed under seal along with a motion for protective order pursuant to 49 CFR 1104.14. That motion is addressed in a separate decision.

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36561]

BNSF Railway Company—Trackage Rights Exemption—Union Pacific Railroad Company

BNSF Railway Company (BNSF), a Class I rail carrier, has filed a verified notice of exemption under 49 U.S.C. 1180.2(d)(7) for local and overhead trackage rights over approximately 25 miles of rail line owned by Union Pacific Railroad Company (UP) between Sterling, Colo., near UP milepost 56.71, and Union, Colo., near UP milepost 81.1, on UP's Julesburg Subdivision (the Line).

Pursuant to a June 25, 2021 written trackage rights agreement (amended on November 5, 2021), UP has agreed to grant trackage rights to BNSF over the Line.[1] According to the verified notice,

[1] An executed, redacted version of the trackage rights agreement and an executed version of the November 5, 2021 amendment were filed with the

Continued

BNSF and its predecessors have operated trackage rights over the Line since 1951. *See Chi., Burlington & Quincy R.R.—Trackage Rts.,* FD 17482 (ICC served Dec. 18, 1951).

The transaction may be consummated on or after December 9, 2021, the effective date of the exemption (30 days after the verified notice was filed).

As a condition to this exemption, any employees affected by the acquisition of the trackage rights will be protected by the conditions imposed in *Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc.,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway—Lease & Operate—California Western Railroad,* 360 I.C.C. 653 (1980).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed by December 2, 2021 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. 36561, should be filed with the Surface Transportation Board via e-filing on the Board's website. In addition, a copy of each pleading must be served on BNSF's representative, Peter W. Denton, Steptoe & Johnson LLP, 1330 Connecticut Avenue NW, Washington, DC 20036.

According to BNSF, this action is categorically excluded from environmental review under 49 CFR 1105.6(c)(3) and from historic preservation reporting requirements under 49 CFR 1105.8(b)(3).

Board decisions and notices are available at *www.stb.gov.*

Decided: November 18, 2021.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Raina White,

Clearance Clerk.

[FR Doc. 2021–25686 Filed 11–23–21; 8:45 am]

BILLING CODE 4915–01–P

verified notice. An executed, unredacted version of the agreement was submitted to the Board under seal concurrently with a motion for protective order. That motion is addressed in a separate decision.

TENNESSEE VALLEY AUTHORITY

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Tennessee Valley Authority.

ACTION: 60-Day notice of submission of information collection approval and request for comments.

SUMMARY: The proposed information collection described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995. The Tennessee Valley Authority is soliciting public comments on this proposed collection.

DATES: Comments should be sent to the Public Information Collection Clearance Officer no later than January 17, 2022.

ADDRESSES: Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Public Information Collection Clearance Officer: Jennifer A. Wilds, Specialist, Records Compliance, Tennessee Valley Authority, 400 W Summit Hill Dr., CLK–320, Knoxville, Tennessee 37902–1401; telephone (865) 632–6580 or by email at *pra@tva.gov.*

SUPPLEMENTARY INFORMATION:

Type of Request: New collection.

Title of Information Collection: Distribution Technology Capability Assessment.

Frequency of Use: Every 2 years.

Type of Affected Public: State, local, and tribal governments; small businesses; non-profit organizations.

Small Businesses or Organizations Affected: Yes.

Federal Budget Functional Category Code: 455.

Estimated Number of Annual Responses: 153.

Estimated Total Annual Burden Hours: 306.

Estimated Average Burden Hours per Response: 2.0.

Need For and Use of Information: As the Balancing Authority of the region, TVA must ensure the electrical grid is reliable. With the growth of Distributed Energy Resources (DER) on the distribution system, TVA and the Local Power Companies (LPCs) must work in tighter coordination to ensure the DER generation does not impact the reliability of the bulk electric system. To support this goal, TVA must understand the current distribution capabilities of the LPCs. Examples of capabilities include but are not limited to customer analytics, advanced asset management, advanced AMI, automated switching, DER monitoring & control, grid planning and voltage optimization. To ease access and completion, information will be submitted online. Once collected, the information will be reviewed by TVA staff and consultants to determine each LPC's state of and plan for system modernization and will inform strategic investment roadmaps and implementation plans that are being developed as part of the Regional Grid Transformation initiative. Summary level information will be provided to the participating LPCs to allow them to gauge where they stand in terms of their technical capabilities compared to their peers which could help give them useful information that informs their individual priorities and investment plans.

Rebecca L. Coffey,

Agency Records Officer.

[FR Doc. 2021–25664 Filed 11–23–21; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2021–0014]

Qualification of Drivers; Exemption Applications; Vision

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

ACTION: Notice of applications for exemption; request for comments.

SUMMARY: FMCSA announces receipt of applications from 11 individuals for an exemption from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. If granted, the exemptions will enable these individuals to operate CMVs in interstate commerce without meeting the vision requirement in one eye.

DATES: Comments must be received on or before December 27, 2021.

ADDRESSES: You may submit comments identified by the Federal Docket Management System (FDMS) Docket No. FMCSA–2021–0014 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov/,* insert the docket number, FMCSA–2021–0014, in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click on the ''Comment'' button. Follow the online instructions for submitting comments.
- *Mail:* Dockets Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200

New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.

- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2021–0014), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *www.regulations.gov/docket?D=FMCSA-2021-0014.* Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, click the ''Comment'' button, and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

B. Viewing Comments

To view comments go to *www.regulations.gov.* Insert the docket number, FMCSA–2021–0014, in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

C. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its regulatory process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.transportation.gov/privacy.*

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The 11 individuals listed in this notice have requested an exemption from the vision requirement in 49 CFR 391.41(b)(10). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

The physical qualification standard for drivers regarding vision found in § 391.41(b)(10) states that a person is physically qualified to drive a CMV if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber.

On July 16, 1992, the Agency first published the criteria for the Vision Waiver Program, which listed the conditions and reporting standards that CMV drivers approved for participation would need to meet (57 FR 31458). The current Vision Exemption Program was established in 1998, following the enactment of amendments to the statutes governing exemptions made by § 4007 of the Transportation Equity Act for the 21st Century (TEA–21), Public Law 105–178, 112 Stat. 107, 401 (June 9, 1998). Vision exemptions are considered under the procedures established in 49 CFR part 381 subpart C, on a case-by-case basis upon application by CMV drivers who do not meet the vision standards of § 391.41(b)(10).

To qualify for an exemption from the vision requirement, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely in intrastate commerce with the vision deficiency for the past three years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at *www.regulations.gov/docket?D=FMCSA–1998–3637.*

FMCSA believes it can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's former waiver study program clearly demonstrated the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively.[1] The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on

[1] A thorough discussion of this issue may be found in a FHWA final rule published in the **Federal Register** on March 26, 1996 and available on the internet at *https://www.govinfo.gov/content/pkg/FR-1996-03-26/pdf/96-7226.pdf.*

that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (See Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (See Weber, Donald C., ''Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,'' Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

III. Qualifications of Applicants

Travis Crosson

Mr. Crosson, 44, has had a rential detachment in his left eye due to a traumatic incident in 1996. The visual acuity in his right eye is 20/20, and in his left eye, light perception. Following an examination in 2021, his optometrist stated, ''It is my medical opinion that Travis has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Crosson reported that he has driven straight trucks for 15 years, accumulating 144,000 miles, and tractor-trailer combinations for 18 years, accumulating 388,000 miles. He holds a Class A CDL from California. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

George M. Hapchuk

Mr. Hapchuk, 67, has had extropia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/60. Following an examination in 2021, his optometrist stated, ''It is my impression that Mr. Hapchuk has adequate vision and peripheral vision to perform the tasks needed to operate a commercial vehicle.'' Mr. Hapchuk reported that he has driven straight trucks for 49 years, accumulating 1.715 million miles. He holds a Class BM CDL from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Gerald E. Hartman

Mr. Hartman, 55, has anterior synechiae in his right eye due to a traumatic incident in 1980. The visual acuity in his right eye is hand motion, and in his left eye, 20/25. Following an examination in 2021, his optometrist stated, ''Decreased vision OD is due to long standing injury (approximately 40 years) and in my opinion should not affect his ability to safely operate a commercial vehicle.'' Mr. Hartman reported that he has driven straight trucks for 15 years, accumulating 702,000 miles. He holds an operator's license from Oklahoma. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Derek E. Haynes

Mr. Haynes, 51, has a prosthesis in his left eye due to a traumatic incident in 1988. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2021, his optometrist stated, ''Based on these findings, I feel Derek E. Haynes has the visual abilities to continue operating a commercial motor vehicle in interstate commerce because of the loss of vision in his left eye occurred in 1988 and he has normal vision in his right eye.'' Mr. Haynes reported that he has driven straight trucks for 17 years, accumulating 1.02 million miles, and tractor-trailer combinations for 7 years, accumulating 420,000 miles. He holds a Class A CDL from Iowa. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Dale O. Hoover

Mr. Hoover, 26, has had a macular retinal detachment in his left eye since 2016. The visual acuity in his right eye is 20/15, and in his left eye, 20/400. Following an examination in 2021, his optometrist stated, ''In my medical opinion, Mr. Hoover has sufficient vision to perform the driving tasks to operate a commercial vehicle.'' Mr. Hoover reported that he has driven tractor-trailer combinations for 7 years, accumulating 350,000 miles. He holds a Class A CDL from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Michael R. Jackson

Mr. Jackson, 56, has corneal scarring in his left eye due to a traumatic incident in childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/400. Following an examination in 2021, his optometrist stated, ''Mr. Jackson's condition is likely to remain stable with insignificant change and I believe he has the ability and sufficient vision to perform driving tasks required to operate a commercial vehicle.'' Mr. Jackson reported that he has driven straight trucks for 3 years, accumulating 300,000 miles. He holds an operator's license from Oklahoma. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Silvian N. Jones

Mr. Jones, 51, has complete vision loss in his left eye due to a traumatic incident in 2016. The visual acuity in his right eye is 20/25, and in his left eye, no light perception. Following an examination in 2021, his ophthalmologist stated, ''I, Jeffrey Hart, MD certify that in my medical opinion Silvian N. Jones has sufficient vision to perform the driving tasks required to operate a commercial motor vehicle (CWW) [sic].'' Mr. Jones reported that he has driven tractor-trailer combinations for 18 years, accumulating 900,000 miles. He holds a Class A CDL from Nevada. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Mark S. Phillips

Mr. Phillips, 51, has had macular degeneration in his left eye related to age since 2017. The visual acuity in his right eye is 20/20, and in his left eye, 20/60. Following an examination in 2021, his optometrist stated, ''I certify that in my medical opinion, this patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Phillips reported that he has driven straight trucks for 16 years, accumulating 464,000 miles, and tractor-trailer combinations for 6 years, accumulating 540,000 miles. He holds a Class AM CDL from Illinois. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Jessie W. Shearer

Mr. Shearer, 31, has a cataract in his left eye due to a traumatic incident in 2008. The visual acuity in his right eye is 20/20, and in his left eye, 20/70. Following an examination in 2021, his optometrist stated, ''I, Bryce Peek OD, certify that Jessie Shearer has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Shearer reported that he

has driven straight trucks for 5 years, accumulating 75,000 miles and tractor-trailer combinations for 5 years, accumulating 90,000 miles. He holds a Class A CDL license from West Virginia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Ryan K. Terrill

Mr. Terrill, 34, has a retinal detachment in his right eye due to a traumatic incident in 2010. The visual acuity in his right eye is no light perception, and in his left eye, 20/20. Following an examination in 2021, his optometrist stated, ''In my medical opinion, Ryan Terrill has sufficient vision to perform the driving tasks required to operate a commercial motor vehicle.'' Mr. Terrill reported that he has driven straight trucks for 13 years, accumulating 2,600 miles. He holds an operator's license from Vermont. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Darrin Wilson

Mr. Wilson, 55, has amblyopia in his right eye due to degenerative myopia during childhood. The visual acuity in his right eye is counting fingers, and in his left eye, 20/20. Following an examination in 2021, his optometrist stated, ''He demonstrates sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Wilson reported that he has driven straight trucks for 8 years, accumulating 70,844 miles. He holds a Class B CDL from Washington. His driving record for the last 3 years shows one crash, which he was not cited for, and no convictions for moving violations in a CMV.

IV. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315(b), FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments and material received before the close of business on the closing date indicated under the **DATES** section of the notice.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2021–25634 Filed 11–23–21; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA 2021–0014]

Request for Information on Title VI Implementation

AGENCY: Federal Transit Administration, United States Department of Transportation (DOT).

ACTION: Notice of extension of comment period.

SUMMARY: The Federal Transit Administration (FTA) is extending the comment period for the request for information (RFI) regarding FTA's Title VI implementation, which was published on November 3, 2021, with the original comment period closing on December 3, 2021.

DATES: Comments are requested by January 3, 2022.

ADDRESSES: You may file comments identified by docket number FTA–2021–0014 by any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov* and follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Ave. SE, between 9:00 a.m. and 5:00 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Instructions: To ensure that your comments are filed correctly, please include the docket number provided [FTA–2021–0014] in your comments. If submitting via mail, hand delivery, or courier, please provide two printed copies. Comments received may be read at the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. The hours of the docket are indicated above in the same location. Comments may also be viewed on the internet, identified by the docket number at the heading of this notice, at *www.regulations.gov.* Note that all comments received will be posted without change to *www.regulations.gov,* including any personal information provided.

Privacy Act: Except as provided below, all comments received into the docket will be made public in their entirety. The comments will be searchable by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You should not include information in your comment that you do not want to be made public. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or at *www.transportation.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: Richie Nguyen, FTA Office of Civil Rights, 1200 New Jersey Avenue SE, Washington, DC 20590, (202) 366–2689 or *richie.nguyen@dot.gov.*

SUPPLEMENTARY INFORMATION: In a letter submitted to the docket dated November 18, 2021, the American Public Transportation Association (APTA), on behalf of more than 1,300 member organizations, requested a 30-day extension of the comment period seeking input on Title VI implementation published in the **Federal Register** on November 3, 2021 (86 FR 60735). As justification for this extension, APTA cited the upcoming holidays, increased grant activity with the recent signing of the recent infrastructure law, and ongoing responses to the COVID–19 pandemic as pulling transit systems in many directions. APTA believes an extension of time would facilitate its members' ability to formulate thoughtful and proactive comments responsive to FTA's request for information.

Given the importance of Title VI implementation and the desire for a robust dialogue on a possible update of FTA's Title VI Circular, FTA believes an extension of time is justified, and an additional 30 days in which to submit comments is adequate. FTA is not republishing the Questions to the Public in this document. Instead, please refer to the November 3, 2021 RFI (86 FR 60735) to view the original questions regarding Title VI implementation.

Scott Giering,

Deputy Associate Administrator for Civil Rights.

[FR Doc. 2021–25706 Filed 11–23–21; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

DEPARTMENT OF ENERGY

[Docket No. FHWA–2021–0015]

Buy America Request for Information

AGENCY: U.S. Department of Transportation (DOT), U.S. Department of Energy. (DOE).

ACTION: Notice; request for information (RFI).

SUMMARY: Reshaping the United States transportation system with electric vehicle (EV) charging infrastructure is an important part of the solution to the climate crisis. EV charger manufacturing, assembly, installation, and maintenance all have the potential to not only support policies on sustainability and climate, but also to create good-paying, union jobs in the United States. This RFI is intended to gather information on shifting manufacturing and assembly processes to the United States considering the bold investment planned in EV charging. DOT and DOE (the Agencies) are interested in hearing from the public, including stakeholders (such as State and local agencies, the EV charger manufacturing industry, component suppliers, labor unions, related associations, and transportation advocates), on the availability of EV chargers manufactured and assembled in the United States, including whether they comply with applicable Buy America requirements.

DATES: Comments must be received on or before January 10, 2022.

ADDRESSES: To ensure that you do not duplicate your docket submissions, please submit all comments by only one of the following ways:

▪ *Federal eRulemaking Portal:* Go to *www.regulations.gov* and follow the online instructions for submitting comments.

▪ *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE, W12–140, Washington, DC 20590–0001.

▪ *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Ave. SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

▪ *Instructions:* You must include the agency name and the docket number, FHWA–2021–0015, at the beginning of your comments. All comments received will be posted without change to *www.regulations.gov,* including any personal information provided.

▪ *Privacy Act:* Except as provided below, all comments received into the docket will be searchable by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or at *www.regulations.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: For questions about this RFI, please contact Mr. Brian Hogge, FHWA Office of Infrastructure, 202–366–1562, or via email at *Brian.Hogge@dot.gov.* For legal questions, please contact Mr. Patrick C. Smith, FHWA Office of the Chief Counsel, 202–366–1345, or via email at *Patrick.C.Smith@dot.gov.* Office hours for FHWA are from 8:00 a.m. to 4:30 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

A copy of this Notice, all comments received on this Notice, and all background material may be viewed online at *https://www.regulations.gov* using the docket number listed above. Electronic retrieval help and guidelines are also available at *https://www.regulations.gov.* An electronic copy of this document also may be downloaded from the Office of the Federal Register's website at: *www.FederalRegister.gov* and the Government Publishing Office's database at: *www.GovInfo.gov.*

Confidential Business Information

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 RFI 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 RFI, it is important that you clearly designate the submitted comments as CBI. Pursuant to 49 CFR 190.343 and 10 CFR 1004.11, you may ask DOT and DOE to give confidential treatment to information you give to the Agency by taking the following steps: (1) Mark each page of the original document submission containing CBI as ''Confidential''; (2) send the Agencies, along with the original document, a second copy of the original document with the CBI deleted; and (3) explain why the information you are submitting is CBI. Unless you are notified otherwise, the Agencies will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this RFI. Submissions containing CBI should be sent to Mr. Brian Hogge, FHWA, 1200 New Jersey Avenue SE, HICP–20, Washington, DC 20590. Any comment submissions that the Agencies receive that are not specifically designated as CBI will be placed in the public docket for this matter.

General Summary

The President has laid out a bold vision for making transformative transportation investments to support job growth and reshape the U.S. transportation system to support a sustainable energy and climate future. The President has set the ambitious goal of building a new national network of 500,000 EV chargers by 2030.[1] The Infrastructure Investment and Jobs Act (IIJA) includes $7.5 billion to build out electric vehicle charging across the nation to make the bold vision a reality. EV charger manufacturing, assembly, installation, and maintenance all have the potential to not only support the President's policies on sustainability and climate, but also to create good-paying, union jobs in the United States. Currently, the Agencies have limited information on the manufacturing and assembly of EV chargers, such as whether EV chargers manufactured in the United States can comply with applicable Buy America requirements.

This RFI is intended to: (i) Help the Agencies better understand whether and to what extent domestic sourcing is available now or may be possible in the future for EV charging equipment and components; (ii) ensure domestic manufacturers have the opportunity to identify any EV charger meeting applicable Buy America requirement; (iii) ensure domestic manufacturers have the opportunity to identify any EV charger that could meet a domestic final assembly condition, and identify the portion of components that meet a domestic final assembly condition; and (iv) highlight benefits of shifting manufacturing and assembly processes to the United States considering the bold investment planned in this area.

The investment in EV chargers in the Bipartisan Infrastructure Deal (Infrastructure Investment and Jobs Act, H.R. 3684, 117th Cong. (2021)) (hereinafter referred to as the BID), can create good-paying, union jobs in America for installation and maintenance that cannot be outsourced. Moreover, domestic jobs may also be created to manufacture domestically available components of those systems.

[1] White House Fact Sheet: Biden Administration Advances Electric Vehicle Charging Infrastructure (Apr. 22, 2021), *available at https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/22/fact-sheet-biden-administration-advances-electric-vehicle-charging-infrastructure/.*

The Agencies are seeking information on the potential benefits to the domestic EV industry of bringing more EV charging equipment manufacturing and assembly to the United States. By shifting manufacturing and assembly processes to the United States for EV chargers as soon as is practicable, and making necessary arrangements with vendors to obtain appropriate certifications showing Buy America compliance for steel and iron components, domestic manufacturing firms have potential to obtain significant first-adopter benefits from the bold investments planned in EV charging infrastructure. Due to FHWA's existing Buy America requirement, if only one domestic manufacturer produces an EV charger meeting its requirement, States that use Federal-aid funds would have to use that manufacturer assuming it can meet demand. The Agencies, through this RFI, aim to gather data and information on domestic manufacturing of EV chargers, including understanding the capability of maximizing the domestic content of EV chargers and opportunities for American workers to manufacture, assemble, install, and maintain them.

Through this RFI, the Agencies seek information regarding the availability of EV chargers manufactured and assembled in the United States, including whether they comply with applicable Buy America requirements. Although the Agencies are not aware of any EV chargers currently able to meet applicable Buy America requirement for steel and iron, the Agencies are interested in promptly obtaining more information on this issue and others set forth below. Obtaining this information promptly is necessary for the Agencies to determine how best to simultaneously support the President's policies on climate, create a national network of EV charging infrastructure, and comply with Buy America requirements.

Background

In January 2021, the President issued Executive Order (E.O.) 14005, titled ''Ensuring the Future is Made in All of America by All of America's Workers.'' 86 FR 7475 (Jan. 28, 2021). E.O. 14005 states that the United States Government ''should, consistent with applicable law, use terms and conditions of Federal financial assistance awards and Federal procurements to maximize the use of goods, products, and materials produced in, and services offered in, the United States.'' The Agencies are committed to ensuring strong and effective Buy America implementation consistent with E.O. 14005. Obtaining information through this RFI is essential to determine how the Agencies might spur and incentivize domestic manufacturing of EV chargers, including EV chargers that meet applicable Buy America requirement for steel and iron. At the same time, the Agencies must also consider how to ensure that EV chargers are widely available in the immediate future for FHWA-funded projects in the United States in support of policies to address the climate crisis, as discussed below.

In January 2021, the President also issued E.O. 14008, titled Tackling the Climate Crisis at Home and Abroad. 86 FR 7619 (Feb. 1, 2021). The President has directed the Federal government to use the full capacity of its agencies and implement a Government-wide approach to address the climate crisis throughout the economy. This approach includes deployment of clean energy technologies and infrastructure. In the context of EV charging infrastructure, the White House has also expressed the goal to accelerate deployment of electric vehicles and charging stations, which will create good-paying, union jobs and move us forward on the path toward a clean transportation future.[2]

EVs, which produce zero tailpipe emissions and can be powered by clean, renewable energy instead of gasoline or diesel fuel, are an important part of the solution to the climate crisis. The President's goal of building a new national network of 500,000 EV chargers by 2030 is a key strategy for reducing greenhouse gas emissions.

Buy America Requirements Under Title 23, United States Code, and the BID

The existing FHWA Buy America requirement, set forth at 23 U.S.C. 313 and 23 CFR 635.410, requires that all steel and iron that is permanently incorporated into a project must be manufactured in the United States unless a waiver is granted, including steel and iron components of a manufactured product. This requirement applies to the obligation of Title 23 U.S.C. funds. For all steel or iron materials to be used in projects that involve the obligation of Federal funds, all manufacturing processes, including application of a coating, must occur in the United States. Coating includes all processes which protect or enhance the value of the material to which the coating is applied. Such projects involve both the acquisition and installation of such equipment. Additionally, the FHWA's Buy America requirement applies to all contracts regardless of the funding source if any contract within the scope of a determination under the National Environmental Policy Act (NEPA) involves an obligation of Federal funds. *See* 23 U.S.C. 313(g). DOT and DOE are also committed to ensuring strong and effective Buy America implementation consistent with E.O. 14005. E.O. 14005 calls for maximizing domestic content and services using terms and conditions of Federal financial assistance awards and Federal procurements.

FHWA currently applies its standard for steel or iron materials under 23 CFR 635.410 to the steel or iron components of predominantly steel or iron manufactured products.[3] For steel and iron components of predominantly steel and iron products, FHWA requires that ''all manufacturing processes, including application of a coating, for these materials must occur in the United States.'' 23 CFR 635.410(b)(1)(ii). For manufactured products that are not predominantly steel and iron, the FHWA currently has a nationwide general waiver from Buy America requirements, which has been in effect since 1983. 48 FR 53099 (Nov. 25, 1983).

In addition to existing FHWA Buy America requirements, Title IX, Subtitle A of the BID, entitled ''Build America, Buy America'' (BABA), provides that not later than 180 days after the date of enactment of the BID, funds made available for a Federal financial assistance program for infrastructure may not be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States. BID, at § 70914(a).

The compliance standard for iron or steel products in the BID at § 70912(6)(A) is similar to the FHWA standard for steel or iron materials at 23 CFR 635.410(b)(1). Also, the BID adds a new category of materials that are covered by Buy America. Specifically, the BID extends Buy America coverage to ''construction materials.'' BID, at § 70912(6)(C). The bill also provides that not later than 180 days after the date of enactment of BID, the Director of the Office of Management and Budget (OMB) must issue standards that define the term ''all manufacturing processes''

[2] White House *FACT SHEET: Biden Administration Advances Electric Vehicle Charging Infrastructure,* Apr. 22, 2021. *https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/22/fact-sheet-biden-administration-advances-electric-vehicle-charging-infrastructure/.*

[3] *See https://www.fhwa.dot.gov/programadmin/contracts/122297.cfm;* and Question #12, at *https://www.fhwa.dot.gov/construction/contracts/buyam_qa.cfm.*

in the case of construction materials. BID, at § 70915(b)(1). In issuing the standards, OMB must ensure that each manufacturing process required for the manufacture of the construction material and the inputs of the construction material occurs in the United States. BID, at § 70915(b)(2). OMB must also take into consideration and seek to maximize the direct and indirect jobs benefited or created in the production of the construction material. *Id.*

Request for Information

Through this RFI, the Agencies are soliciting information and suggestions from the public and a broad array of stakeholders across public and private sectors that may be familiar with or interested in manufacturing and assembly of EV chargers and their deployment as part of Federal-aid construction projects.

Request To Specify EV Charger Type

In answering the questions below, the Agencies ask that you indicate in your written comments which question(s) you are answering and to specify in each answer what type of EV charger you are discussing. For example, specify what level of charging is it used for, whether it uses the SAE J1772 connector for AC charging (also known as the J-plug), whether it provides DC Fast Charging, whether it uses the Combined Charging System (CCS) connector, whether it uses the CHAdeMO connector, and other relevant information.

General Questions on EV Chargers

1. Identify all EV charger manufacturers currently selling, manufacturing, or operating in the United States, of which you are aware.

2. Identify all such EV charger manufacturers of which you are aware that can either meet FHWA's Buy America requirement or can currently assemble EV chargers in the United States to meet a domestic final assembly condition. For those that can meet a final assembly condition, please identify the percentage of components manufactured in the United States (if known).

3. What is the total cost of a typical EV charger?

4. How much does cost vary for EV chargers? Why does the cost vary?

5. What is the average delivery timeline for an EV charger?

6. How much does delivery time vary for EV chargers? Why does the delivery time vary?

7. For manufacturers: What type(s) of EV chargers are currently produced or likely to be produced in the near future?

Manufacturer Ability To Meet FHWA's Existing Buy America Requirement

8. Are there existing EV chargers that meet FHWA's existing Buy America requirement for steel and iron? (Yes or No)

9. If you answered yes to the preceding question:

a. How many EV chargers meeting FHWA's existing Buy America requirement for steel and iron can be manufactured per year?

b. What is the price typically paid for the steel and iron for used in EV chargers?

c. What percent of the total price is typically representative cost of the steel and iron used in EV chargers?

d. Can the origins of the steel and iron used in your charger by certified by documentation? If so, how?

e. What is the typical delivery timeline for EV chargers?

10. For those EV chargers currently manufactured that cannot meet FHWA's Buy America requirement, what steps can be taken to provide EV chargers that meet FHWA's existing Buy America requirement? How long might it take to undertake those steps? What is the volume of EV chargers that could be shifted to manufacture in compliance with FHWA's Buy America requirement? Can that volume be ramped up over time?

Manufacturer Ability To Meet Domestic Final Assembly Condition for EV Chargers

11. Are there existing EV chargers that are currently assembled in the United States that could meet a domestic final assembly condition? (Yes or No).

12. If you answered yes to the preceding question, provide details about domestic final assembly. Also explain whether this includes domestic final assembly of all EV charger components and whether the assembled EV charger is ready for installation and use.

13. If you answered yes to Question 12:

a. How many EV chargers assembled in the United States (meeting a domestic final assembly condition) currently meet the domestic final assembly requirement?

b. How many EV chargers assembled in the United States (meeting a domestic final assembly condition) could be expected to be provided annually each year between 2022 and 2030?

c. What would be the likely price of EV chargers meeting the domestic final assembly requirement?

d. What is the likely timeline for delivery of those EV chargers?

e. What percentage of the components used in an EV charger assembled in the United States are themselves made in the United States? Of the components made in the United States, what percentage of those are iron and steel as opposed to other parts?

EV Charger Components and Subcomponents

14. Identify each component and subcomponent typically contained in an EV charger (or for manufacturers, in the EV chargers you produce).

15. What materials do the components and subcomponents consist of (*e.g.,* iron, steel, non-ferrous metals, semiconductors, plastics?

16. Provide information on the manufacturing processes for each component and subcomponent, including where the manufacturing processes occur.

17. Provide information on the assembly steps for each component or subcomponent including where the assembly steps occur (if the answer differs from the preceding question).

18. Provide information on the cost of each component or subcomponent.

19. Provide information on the domestic content of each component or subcomponent, including the amount and percentage of domestic content (relative to foreign content). If this cannot be traced, explain why.

Ability To Maximize Domestic Content, Services, and Labor

20. Provide information on how the domestic content of EV chargers (including their components, subcomponents, or component bundles) could be maximized (even if full Buy-America compliance is not possible).

21. Provide information on how domestic services and labor used in the manufacturing and assembly of EV chargers (including their components, subcomponents, or component bundles) could be maximized (even if full Buy-America compliance is not possible).

Authority: 23 U.S.C. 313; Pub. L. 110–161; 23 CFR 635.410.

Polly Trottenberg,

Deputy Secretary, Department of Transportation.

Kelly J. Speakes-Backman,

Principal Deputy Assistant Secretary for Energy Efficiency and Renewable Energy, Department of Energy.

[FR Doc. 2021–25717 Filed 11–23–21; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1098–MA

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Form 1098–MA, Mortgage Assistance Payments.

DATES: Written comments should be received on or before January 24, 2022 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Sara Covington, (737) 800–6149, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Sara.L.Covington@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Mortgage Assistance Payments.

OMB Number: 1545–2221.

Form Number: Form 1098–MA.

Abstract: This form is a statement reported to the IRS and to taxpayers. It will be filed and furnished by State Housing Finance Agencies (HFAs) and HUD to report the total amounts of mortgage assistance payments and homeowner mortgage payments made to mortgage servicers. The requirement for the statements are authorized by Notice 2011–14, supported by Public Law 111–203, sec. 1496, and Public Law 110–343, Division A, sec. 109.

Current Actions: There were no changes made to the document that resulted in any change to the burden previously reported to OMB. We are making this submission to renew the OMB approval.

Type of Review: Extension to previously approved collection.

Affected Public: Individuals, Federal Government, State, Local, or Tribal Governments, and other Not-for-profit organizations.

Estimated Number of Respondents: 52.

Estimated Time per Respondent: 2 hours 50 minutes.

Estimated Total Annual Burden Hours: 170,400.

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. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 18, 2021.

Sara L. Covington,

IRS Tax Analyst.

[FR Doc. 2021–25647 Filed 11–23–21; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; COVID Relief Programs: Homeowner Assistance Fund and Emergency Rental Assistance

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests 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. The public is invited to submit comments on these requests.

DATES: Comments must be received on or before December 27, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Molly Stasko by emailing *PRA@treasury.gov,* calling (202) 622–8922, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

1. Title: Emergency Rental Assistance Program (ERA1).

OMB Control Number: 1505–0266.

Type of Review: Extension of a currently approved collection.

Description: On December 27, 2020, the President signed the Consolidated Appropriations Act, 2021 (the ''Act''), Public Law 116–260. Division N, Title V, Section 501(a)(1) of the Act established the Emergency Rental Assistance (ERA 1) program and provides $25 billion for the U.S. Department of the Treasury (Treasury) to make payments to States (defined to include the District of Columbia), U.S. Territories (Puerto Rico, U.S. Virgin Islands, Guam, Northern Mariana Islands, and American Samoa), Indian tribes or Tribally Designated Housing Entities, as applicable, the Department of Hawaiian Home Lands, and certain local governments with more than 200,000 residents (collectively the ''eligible grantees'') to provide financial assistance and housing stability services to eligible households.

Forms: Award and Payment Forms, Compliance Reporting Forms.

Affected Public: State, Territorial, Tribal, and certain Local Governments.

Estimated Number of Respondents: 5,445.

Frequency of Response: Once, Monthly, Quarterly.

Estimated Total Number of Annual Responses: 6,576.

Estimated Time per Response: 15 minutes to 1 hour for award and payment forms, 4 hours to 30 hours for compliance reporting.

Estimated Total Annual Burden Hours: 49,773.

2. Title: Homeowner Assistance Fund.

OMB Control Number: 1505–0269.

Type of Review: Extension of a currently approved collection.

Description: On March 11, 2021, the President signed the American Rescue Plan Act of 2021 (the ''Act''), Public Law 117–2. Title III, Subtitle B, Section 3206 of the Act established the Homeowner Assistance Fund and provides $9.961 billion for the U.S. Department of the Treasury (Treasury) to make payments to States (defined to include the District of Columbia, Puerto Rico, U.S. Virgin Islands, Guam, Northern Mariana Islands, and American Samoa), Indian tribes or Tribally Designated Housing Entities, as applicable, and the Department of Hawaiian Home Lands (collectively the ''eligible entities'') to mitigate financial hardships associated with the coronavirus pandemic, including for the purposes of preventing homeowner mortgage delinquencies, defaults, foreclosures, loss of utilities or home energy services, and displacements of homeowners experiencing financial hardship after January 21, 2020, through qualified expenses related to mortgages and housing.

Forms: Award and Payment Forms, Title VI Assurance Form, Grantee Templates and Term Sheets.

Affected Public: State and Tribal Governments.

Estimated Number of Respondents: 651.

Frequency of Response: Once.

Estimated Total Number of Annual Responses: 3,906.

Estimated Time per Response: 15 minutes to 2 hours.

Estimated Total Annual Burden Hours: 2,768.

3. Title: Emergency Rental Assistance Program (ERA2).

OMB Control Number: 1505–0270.

Type of Review: Extension of a currently approved collection.

Description: On March 11, 2021, the President signed the American Rescue Plan Act of 2021 (the ''Act''), Public Law 117–2. Title III, Subtitle B, Section 3201 of the Act authorized the Emergency Assistance (ERA 2) program and provides $21.55 billion for the U.S. Department of the Treasury (Treasury) to make payments to States (defined to include the District of Columbia), U.S. Territories (Puerto Rico, U.S. Virgin Islands, Guam, Northern Mariana Islands, and American Samoa), and certain local governments with more than 200,000 residents (collectively the ''eligible grantees'') to provide financial assistance and housing stability services to eligible households, and cover the costs for other affordable rental housing and eviction prevention activities for eligible households.

Forms: Awards and Payment Forms, Title VI Assurance Form, Compliance Reporting Forms.

Affected Public: State, Territorial and certain Local Governments.

Estimated Number of Respondents: 2,680.

Frequency of Response: Once, Monthly, Quarterly.

Estimated Total Number of Annual Responses: 4,560.

Estimated Time per Response: 15 minutes for award and payment forms, 30 minutes for Title VI Assurances, 1 hour to 30 hours for compliance reporting.

Estimated Total Annual Burden Hours: 46,973.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: November 19, 2021.

Molly Stasko,

Treasury PRA Clearance Officer.

[FR Doc. 2021–25713 Filed 11–23–21; 8:45 am]

BILLING CODE 4810–AK–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Office of Foreign Assets Control Rough Diamonds Control Regulations

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury 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. The public is invited to submit comments on this request.

DATES: Comments must be received on or before December 27, 2021 to be assured of consideration.

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 information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Molly Stasko by emailing *PRA@treasury.gov,* calling (202) 622–8922, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Title: Rough Diamonds Control Regulations.

OMB Control Number: 1505–0198.

Type of Review: Extension of a currently approved collection.

Description: The collections of information are contained in section 592.301(a)(3) of OFAC's Rough Diamonds Control Regulations. The person identified as the ultimate consignee on the Customs Form 7501 Entry Summary, or its electronic equivalent, is required to report that person's receipt of a shipment of rough diamonds to the relevant foreign exporting authority within 15 calendar days of the date that the shipment arrived at the U.S. port of entry.

Forms: Section 592.301(a)(3) of the Rough Diamonds Control Regulations states that the report filed by the ultimate consignee need not be in any particular form and may be submitted electronically or by mail or courier.

Affected Public: Business organizations and individuals engaged in the international diamond trade.

Estimated Number of Respondents: 66.

Frequency of Response: The estimated annual frequency of responses is approximately 7 per respondent, based on average transaction volume.

Estimated Total Number of Annual Responses: 467.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 78.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: November 19, 2021.

Molly Stasko,

Treasury PRA Clearance Officer.

[FR Doc. 2021–25676 Filed 11–23–21; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Agreement for a Social Impact Partnership Project

AGENCY: Department of the Treasury.

ACTION: Notice.

SUMMARY: In accordance with the Social Impact Partnerships to Pay for Results Act (''SIPPRA''), the U.S. Department of the Treasury (''Treasury'') and City and County of Denver (''Denver'') have entered into an agreement for a social impact partnership project (the ''Project Grant Agreement''). The SIPPRA program makes funding available to state and local governments for pay-for-results social impact partnership projects. SIPPRA projects may seek to improve a variety of social problems,

including increasing employment, wages, and financial stability for low-income families; improving family health and housing; and reducing recidivism.

SUPPLEMENTARY INFORMATION: The Project Grant Agreement contains the following features:

(1) The outcome goals of the social impact partnership project:

The Denver Housing to Health (''H2H'') Pay for Success Project Denver proposes the following intermediate outcomes: Increased housing stability; decreased police contacts; and increased access to health services. Denver also proposes the following long-term outcomes: Improved health; increased access to health services (resulting in decreased visits to detoxification centers and decreased avoidable emergency room and hospital visits); and decreased criminal justice involvement. Overall, the project objective is to reduce the Medicaid and Medicare expenditures of the target population.

(2) A description of each intervention in the project:

Two service providers, the Colorado Coalition for the Homeless (''CCH'') and the Mental Health Center of Denver (''MHCD'') will deliver permanent supportive housing, modified assertive community treatment (''ACT'') and case management to 125 participants.

- Permanent Supportive Housing is an evidence-based intervention that provides housing plus intensive case management and connects clients with community services, including primary health care.
- Modified Assertive Community Treatment consists of a multidisciplinary team that strives to meet behavioral health and other needs of clients in order to maximize opportunities for recovery. Among the primary benefits of ACT is its ability to have multiple perspectives for treatment planning and assessment, ongoing collaboration, and planning and evaluation, with the client being an active member of the team.
- Case Management includes evidence-based motivational interviewing and trauma-informed care to assist participants in engaging and connecting with integrated health services, as deemed clinically appropriate and fitting the clients' needs. This approach is designed to help improve health outcomes, address barriers to housing stability, manage mental illness and reduce interaction with the criminal justice system.

(3) The target population that will be served by the project:

H2H will target individuals who are chronically homeless, have a record of at least eight arrests over the past three years in Denver County, and are at high risk for avoidable and high-cost health services paid through Medicaid.

(4) The expected social benefits to participants who receive the intervention and others who may be impacted:

H2H is expected to help individuals improve their health outcomes, break the cycle of jail and homelessness, and save taxpayer dollars on the cost of health care in jail and in the community.

(5) The detailed roles, responsibilities, and purposes of each Federal, State, or local government entity, intermediary, service provider, independent evaluator, investor, or other stakeholder:

H2H role	Partner	Responsibilities
Lead applicant/Local government.	City of Denver	Repay investors with SIPPRA funds if performance benchmarks are met.
Intermediary	A special purpose vehicle will be created by The Corporation for Supportive Housing (''CSH'').	Manage service provider performance, day-to-day operations and facilitate investor agreements and payments from the DOF to investors. Serve as project manager—providing project oversight, communicating with all parties, and providing advisory services.
Service providers	Colorado Coalition for the Homeless	Provide housing.
	Mental Health Center of Denver	Provide supportive housing services. Deliver ACT.
Independent evaluation	Urban Institute	Establish research design. Verify that performance benchmarks are met. Measure other outcomes of interest.
Pay for Success investors	Including Northern Trust, The Denver Foundation There has been significant investor interest, and project partners intend to add investors if the project receives SIPPRA funding. In addition to letters of commitment from the investors named above, letters of interest and support from other investors are included as attachments.	Provide capital to fund services. Receive principal and interest when performance benchmarks are met.

(6) The payment terms, the methodology used to calculate outcome payments, the payment schedule, and performance thresholds:

The Recipient's outcome payment will be equal to the sum of the annual difference between the treatment group's Medicaid and Medicare expenditures and the control group's Medicaid and Medicare expenditures over the project period.

(7) The project budget:

PROJECT BUDGET

Service Delivery	$13,524,300.00
Evaluation	1,282,800.00
Total Project Costs	14,807,100.00

(8) The project timeline:

The intervention will take place over seven years, beginning on April 29, 2022 and serving clients through April 28, 2029.

(9) The project eligibility criteria:

The eligibility criteria for H2H are that individuals must be at least 18 years old, have had at least eight arrests over the past three years, were experiencing homelessness at the time of their last arrest and are at high risk for avoidable and high-cost health services paid through Medicaid and Medicare. Potentially eligible clients will be referred to H2H through Denver Health and Denver Police Department (''DPD'').

(10) The evaluation design:

H2H'S randomized controlled trial (''RCT'') design will compare the trajectories of homeless, frequent users

of medical services who receive supportive housing and those who receive usual care. Because available supportive housing is not available to all of the people who need it, the limited 125 housing slots will be allocated by lottery, which is a fair way to allocate the scarce housing resources and also enables random assignment. The evaluation will track outcomes for both groups and attribute any differences to the H2H program intervention.

(11) The metrics that will be used in the evaluation to determine whether the outcomes have been achieved as a result of each intervention and how these metrics will be measured:

The evaluation metrics will include information on housing stability and reductions in jail days and net reductions in federal expenditures for Medicaid and Medicare claims, to be paid by SIPPRA funding if successful. The net reduction in federal expenditures will be measured as the average difference in the change over time (pre and post randomization) in the amount billed for claims between the treatment and control groups.

(12) The estimate of the savings to the Federal, State, and local government, on a program-by-program basis and in the aggregate, if the agreement is entered into and implemented and the outcomes are achieved as a result of each intervention:

Federal Savings: $5,512,000
City Savings: $9,235,055

Authority: Public Law 115–123, Division E, Title VIII, 42 U.S.C. 1397n–1397n–13.

Catherine Wolfram,

Deputy Assistant Secretary for Climate and Energy Economics, Office of Economic Policy.

[FR Doc. 2021–25600 Filed 11–23–21; 8:45 am]

BILLING CODE 4810–AK–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Community Development Financial Institutions Funds Bond Guarantee Program

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury 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. The public is invited to submit comments on this request.

DATES: Comments must be received on or before December 27, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Molly Stasko by emailing *PRA@treasury.gov,* calling (202) 622–8922, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Title: Bond Guarantee Program.

OMB Control Number: 1559–0044.

Type of Review: Revision of a currently approved collection.

Description: The purpose of the Community Development Financial Institutions (CDFI) Bond Guarantee Program (BG Program) is to support CDFI lending by providing Guarantees for Bonds issued by Qualified Issuers as part of a Bond Issue for Eligible Community or Economic Development Purposes. The BG Program provides CDFIs with a source of long-term capital and further the mission of the CDFI Fund to increase economic opportunity and promote community development investments for underserved populations and distressed communities in the United States. The CDFI Fund achieves its mission by promoting access to capital and local economic growth by investing in, supporting, and training Community Development Financial Institutions (CDFIs).

In compliance with OMB Circular A–129, the CDFI Bond Guarantee Program will collect all necessary information to manage the portfolio effectively and track progress towards policy goals and statutory and regulatory requirements. The reporting forms are necessary for the Department of the Treasury's review and impact analysis on the current and proposed use of Bond Proceeds in underserved communities and to support the CDFI Fund in proactively managing regulatory compliance. Risk detection and mitigation are crucial activities for the long-term operation and viability of the CDFI Bond Guarantee Program. The Department of the Treasury's authority to collect this information and the specified data collection area and parameters are consistent with the requirements contained in 12 CFR part 1808.101(d)(1)(2) of the CDFI Bond Guarantee Program Interim Rule.

Forms: Qualified Issuer Application, Guarantee Application, Secondary Loan Requirements Certification, Secondary Loan Commitment Form, Financial Condition Monitoring Report, Pledged Loan Monitoring Report, Tertiary Loan Monitoring Report, and Annual Assessment Report.

Affected Public: Businesses or other for-profits, and Not-for-profit institutions.

Estimated Number of Respondents: 90.

Frequency of Response: On occasion for applications, Annually for reports.

Estimated Total Number of Annual Responses: 990.

Estimated Time per Response: 92.222 hours for applications, 1.66–2 hours for reports.

Estimated Total Annual Burden Hours: 9,873.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: November 18, 2021.

Molly Stasko,

Treasury PRA Clearance Officer.

[FR Doc. 2021–25660 Filed 11–23–21; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0783]

Agency Information Collection Activity Under OMB Review: Nonprofit Research and Education Corporations (NPCs)—Annual Report, Remediation Plans & Assessment Questionnaires

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Health 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. 2900–0783.''

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 1717 H Street NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0783'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 44 U.S.C. 3501–3521.

Title: Nonprofit Research and Education Corporations (NPCs)—Annual Report, Remediation Plans & Assessment Questionnaires, VA Forms 10–10073, 10–10073A, 10–10073B, and 10–10073C.

OMB Control Number: 2900–0783.

Type of Review: Reinstatement of a previously approved collection.

Abstract: Title 38 U.S.C. Section 7366, Accountability and Oversight, states ''(b) each such corporation (NPC) shall submit to the Secretary (Department of Veterans Affairs (DVA)) an annual report providing a detailed statement of its operations, activities, and accomplishments during that year.'' The individual NPC annual reports are combined into one NPC Annual Report to Congress. VA oversight of NPCs includes reviews, audits, self-assessments, and remediation plans. This information collection is used for oversight of NPCs and includes the following:

a. NPC Annual Report Template, VA Form 10–10073
b. NPC Audit Actions Items Remediation Plans, VA Form 10–10073A
c. NPPO Internal Control Questionnaire, VA Form 10–10073B
d. NPPO Operations Oversight Questionnaire, VA Form 10–10073C

NPC Annual Report Template, VA Form 10–10073

Since 1988, when the enabling legislation for the NPCs was passed, annual reports have been obtained from each NPC and combined into an NPC Annual Report to Congress. Congress uses the combined NPC Annual Report to Congress to monitor the progress of the overall NPC program it created. The NPC Annual Report to Congress is also used by top-level VA executives to evaluate the program and to recommend changes where needed. VHA's Nonprofit Oversight Board and the Nonprofit Program Office (NPPO) use both the combined NPC Annual Report to Congress and the individual NPC Annual Report Templates to monitor and oversee the NPCs. Trend analyses and other financial information are analyzed for each NPC and judgments made about each NPC's progress, financial viability, stewardship of assets, and accomplishments.

NPC Audit Actions Items Remediation Plans, VA Form 10–10073A

The NPC Audit Action Items Remediation Plans information collection is used to review the NPCs' remedies for audit deficiencies and recommendations. The major objective of the information collection is to help ensure proper corrective action. If any of the remediation plans submitted are inadequate, then the NPPO will make recommendations for sound, workable remedies.

NPPO Internal Control Questionnaire, VA Form 10–10073B

The NPPO Internal Control Questionnaire, or portions of it, will be used in conducting reviews, audits, and investigations of the NPCs. The major objective of the questionnaire is to uncover weaknesses and lapses in internal controls. The NPPO will then make recommendations for improved internal controls wherever there are weaknesses or lapses. The questionnaire also may be used as a voluntary self-assessment by the NPCs.

NPPO Operations Oversight Questionnaire, VA Form 10–10073C

The NPPO Operations Oversight Questionnaire, or portions of it, will be used in conducting operational reviews of the NPCs. The major objective of the questionnaire is to uncover operating problems and areas that need improvement. The NPPO will then make recommendations for operations improvements wherever problems or opportunities for improvement are found. The questionnaire also may be used as a voluntary self-assessment by the NPCs.

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: 86 FR 172 on September 9, 2021, pages 50596 and 50597.

Affected Public: Individuals and households.

Estimated Annual Burden: 858 total hours.

a. NPC Annual Report Template—301 hours.
b. NPC Audit Actions Items Remediation Plans—84 hours.
c. NPPO Internal Control Questionnaire—344 hours.
d. NPPO Operations Oversight Questionnaire—129 hours.

Estimated Average Burden per Respondent: 660 total minutes.

a. NPC Annual Report Template—210 minutes.
b. NPC Audit Actions Items Remediation Plans—120 minutes.
c. NPPO Internal Control Questionnaire—240 minutes.
d. NPPO Operations Oversight Questionnaire—90 minutes.

Frequency of Response: Once annually.

Estimated Number of Respondents: 300 total.

a. NPC Annual Report Template—86.
b. NPC Audit Actions Items Remediation Plans—42.
c. NPPO Internal Control Questionnaire—86.
d. NPPO Operations Oversight Questionnaire—86.

By direction of the Secretary:

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2021–25679 Filed 11–23–21; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0012]

Agency Information Collection Activity Under OMB Review: Application for Cash Surrender or Policy Loan

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. 2900–0012.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 1717 H Street NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0012'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 44 U.S.C. 3501–21.

Title: Application for Cash Surrender or Policy Loan (VA Form 29–1546).

OMB Control Number: 2900–0012.

Type of Review: Reinstatement with change of a previously approved collection.

Abstract: The Application for Cash Surrender or Policy Loan solicits information needed from Veterans to apply for cash surrender value or policy loan on his/her insurance. The information on this form is required by law, 38 U.S.C. 1906 and 1944, 38 CFR 6.115, 6.116, 6.117, 8.27, 6.100, 6.101 and 8.28.

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 86 FR 179 on September 20, 2021, page 52298.

Affected Public: Individuals or Households.

Estimated Annual Burden: 4,939.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: Upon Request.

Estimated Number of Respondents: 29,636.

By direction of the Secretary:

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2021–25677 Filed 11–23–21; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

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Part II

Department of Labor

Office of the Secretary of Labor

29 CFR Parts 10 and 23

Increasing the Minimum Wage for Federal Contractors; Final Rule

DEPARTMENT OF LABOR

Office of the Secretary of Labor

29 CFR Parts 10 and 23

RIN 1235–AA41

Increasing the Minimum Wage for Federal Contractors

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Final rule.

SUMMARY: This document finalizes regulations to implement an Executive order titled ''Increasing the Minimum Wage for Federal Contractors,'' which was signed by President Joseph R. Biden, Jr. on April 27, 2021. The Executive order states the Federal Government's procurement interests in economy and efficiency are promoted when the Federal Government contracts with sources that adequately compensate their workers. The Executive order therefore seeks to raise the hourly minimum wage paid by those contractors to workers performing work on or in connection with covered Federal contracts to $15.00 per hour, beginning January 30, 2022; and beginning January 1, 2023, and annually thereafter, an amount determined by the Secretary of Labor (Secretary). The Executive order directs the Secretary to issue regulations by November 24, 2021, consistent with applicable law, to implement the order's requirements. This final rule therefore establishes standards and procedures for implementing and enforcing the minimum wage protections of the Executive order. As required by the order, the final rule incorporates to the extent practicable existing definitions, principles, procedures, remedies, and enforcement processes under the Fair Labor Standards Act of 1938, the Service Contract Act, the Davis-Bacon Act, and the Executive order of February 12, 2014, entitled ''Establishing a Minimum Wage for Contractors,'' as well as the regulations issued to implement that order.

DATES:

Effective date: This final rule is effective on January 30, 2022.

Applicability date: For procurement contracts subject to the Federal Acquisition Regulation and Executive Order 14026, this final rule is applicable beginning on the effective date of regulations issued by the Federal Acquisition Regulatory Council. For nonprocurement contracts subject to Executive Order 14026, this final rule is applicable beginning on the effective date of relevant agency action to implement the Executive order and this final rule.

FOR FURTHER INFORMATION CONTACT: Amy DeBisschop, Director of the Division of Regulations, Legislation, and Interpretation, Wage and Hour Division (WHD), U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210, telephone: (202) 693–0406 (this is not a toll-free number). *Accessible Format:* Copies of this final rule may be obtained in alternative formats (Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, large print, braille, audiotape, compact disc, or other accessible format), upon request, by calling (202) 693–0675 (this is not a toll-free number). TTY/TDD callers may dial toll-free (877) 889–5627 to obtain information or request materials in alternative formats.

Questions of interpretation or enforcement of the agency's existing regulations may be directed to the nearest WHD district office. Locate the nearest office by calling the WHD's toll-free help line at (866) 4US–WAGE ((866) 487–9243) between 8 a.m. and 5 p.m. in your local time zone, or log onto WHD's website at *https://www.dol.gov//whd/contact/local-offices* for a nationwide listing of WHD district and area offices.

SUPPLEMENTARY INFORMATION:

I. Background

On April 27, 2021, President Joseph R. Biden, Jr. issued Executive Order 14026, ''Increasing the Minimum Wage for Federal Contractors.'' This Executive order explains that increasing the hourly minimum wage paid to workers performing on or in connection with covered Federal contracts to $15.00 beginning January 30, 2022 will ''bolster economy and efficiency in Federal procurement.'' 86 FR 22835. The order builds on the foundation established by Executive Order 13658, ''Establishing a Minimum Wage for Contractors,'' signed by President Barack Obama on February 12, 2014. *See* 79 FR 9851.

A. Prior Relevant Executive Orders

On February 12, 2014, President Barack Obama signed Executive Order 13658, ''Establishing a Minimum Wage for Contractors.'' *See* 79 FR 9851. Executive Order 13658 stated that the Federal Government's procurement interests in economy and efficiency are promoted when the Federal Government contracts with sources that adequately compensate their workers. *Id.* Executive Order 13658 therefore sought to increase efficiency and cost savings in the work performed by parties that contract with the Federal Government by raising the hourly minimum wage paid by those contractors to workers performing on or in connection with covered Federal contracts to: (i) $10.10 per hour, beginning January 1, 2015; and (ii) beginning January 1, 2016, and annually thereafter, an amount determined and announced by the Secretary, accounting for changes in inflation as measured by the Consumer Price Index for Urban Wage Earners and Clerical Workers. *Id.* Section 3 of Executive Order 13658 also established a minimum hourly cash wage requirement for tipped employees performing on or in connection with covered contracts, initially set at $4.90 per hour for 2015 and gradually increasing to 70 percent of the full Executive Order 13658 minimum wage over a period of years.

Section 4 of Executive Order 13658 directed the Secretary to issue regulations to implement the order's requirements. *See* 79 FR 9852. Accordingly, after engaging in notice-and-comment rulemaking, the Department published a final rule on October 7, 2014, to implement the Executive order. *See* 79 FR 60634. The final regulations, set forth at 29 CFR part 10, established standards and procedures for implementing and enforcing the minimum wage protections of the Executive order. Pursuant to the methodology established by Executive Order 13658, the applicable minimum wage rate has increased each year since 2015. Executive Order 13658's minimum wage requirement is presently $10.95 per hour and its minimum cash wage requirement for tipped employees is presently $7.65 per hour. *See* 85 FR 53850. These rates will increase to $11.25 per hour and $7.90 per hour, respectively, on January 1, 2022. *See* 86 FR 51683.

On May 25, 2018, President Donald J. Trump issued Executive Order 13838, titled ''Exemption from Executive Order 13658 for Recreational Services on Federal Lands.'' *See* 83 FR 25341. Section 2 of Executive Order 13838 amended Executive Order 13658 to add language providing that the provisions of Executive Order 13658 ''shall not apply to [Federal] contracts or contract-like instruments'' entered into ''in connection with seasonal recreational services or seasonal recreational equipment rental.'' *Id.* Executive Order 13838 additionally stated that seasonal recreational services include ''river running, hunting, fishing, horseback riding, camping, mountaineering activities, recreational ski services, and youth camps.'' *Id.* Executive Order 13838 further specified that this exemption does not apply to ''lodging

and food services associated with seasonal recreational activities.'' *Id.* Executive Order 13838 did not otherwise amend Executive Order 13658. On September 26, 2018, the Department implemented Executive Order 13838 by adding the required exclusion to the regulations for Executive Order 13658 at 29 CFR 10.4(g). *See* 83 FR 48537.

B. Executive Order 14026

On April 27, 2021, President Joseph R. Biden Jr. signed Executive Order 14026, ''Increasing the Minimum Wage for Federal Contractors.'' 86 FR 22835. Executive Order 14026 states that the Federal Government's procurement interests in economy and efficiency are promoted when the Federal Government contracts with sources that adequately compensate their workers. *Id.* Executive Order 14026 therefore seeks to promote economy and efficiency in Federal procurement by raising the hourly minimum wage paid by those contractors to workers performing work on or in connection with covered Federal contracts to (i) $15.00 per hour, beginning January 30, 2022; and (ii) beginning January 1, 2023, and annually thereafter, an amount determined by the Secretary in accordance with the Executive order. *Id.*

Section 1 of Executive Order 14026 sets forth a general position of the Federal Government that increasing the hourly minimum wage paid by Federal contractors to $15.00 will ''bolster economy and efficiency in Federal procurement.'' 86 FR 22835. The order states that raising the minimum wage ''enhances worker productivity and generates higher-quality work by boosting workers' health, morale, and effort; reducing absenteeism and turnover; and lowering supervisory and training costs.'' *Id.* The order further states that these savings and quality improvements will lead to improved economy and efficiency in Government procurement. *Id.*

Section 2 of Executive Order 14026 therefore increases the minimum wage for Federal contractors and subcontractors. 86 FR 22835. The order provides that executive departments and agencies, including independent establishments subject to the Federal Property and Administrative Services Act, 40 U.S.C. 102(4)(A), (5) (agencies), shall, to the extent permitted by law, ensure that contracts and contract-like instruments (collectively referred to as ''contracts''), as described in section 8(a) of the order and defined in this rule, include a particular clause that the contractor and any covered subcontractors shall incorporate into lower-tier subcontracts. 86 FR 22835. That contractual clause, the order states, shall specify, as a condition of payment, that the minimum wage to be paid to workers employed in the performance of the contract or any covered subcontract thereunder, including workers whose wages are calculated pursuant to special certificates issued under section 14(c) of the Fair Labor Standards Act of 1938 (FLSA), 29 U.S.C. 214(c),[1] shall be at least: (i) $15.00 per hour beginning January 30, 2022; and (ii) beginning January 1, 2023, and annually thereafter, an amount determined by the Secretary in accordance with the Executive order. 86 FR 22835. As required by the order, the minimum wage amount determined by the Secretary pursuant to this section shall be published by the Secretary at least 90 days before such new minimum wage is to take effect and shall be (A) not less than the amount in effect on the date of such determination; (B) increased from such amount by the annual percentage increase in the Consumer Price Index (CPI) for Urban Wage Earners and Clerical Workers (United States city average, all items, not seasonally adjusted) (CPI–W), or its successor publication, as determined by the Bureau of Labor Statistics; and (C) rounded to the nearest multiple of $0.05. *Id.*

Section 2 of the Executive order further explains that, in calculating the annual percentage increase in the CPI for purposes of that section, the Secretary shall compare such CPI–W for the most recent month, quarter, or year available (as selected by the Secretary prior to the first year for which a minimum wage determined by the Secretary is in effect pursuant to this section) with the CPI–W for the same month in the preceding year, the same quarter in the preceding year, or the preceding year, respectively. 86 FR 22835–36. Pursuant to that section, nothing in the order excuses noncompliance with any applicable Federal or state prevailing wage law or any applicable law or municipal ordinance establishing a minimum wage higher than the minimum wage established under the order. 86 FR 22836.

Section 3 of Executive Order 14026 explains the application of the order to tipped workers. 86 FR 22836. It provides that for workers covered by section 2 of the order who are tipped employees pursuant to section 3(t) of the FLSA, 29 U.S.C. 203(t), the cash wage that must be paid by an employer to such workers shall be at least: (i) $10.50 an hour, beginning on January 30, 2022; (ii) beginning January 1, 2023, 85 percent of the wage in effect under section 2 of the order, rounded to the nearest multiple of $0.05; and (iii) beginning January 1, 2024, and for each subsequent year, 100 percent of the wage in effect under section 2 of the order. 86 FR 22836. Where workers do not receive a sufficient additional amount of tips, when combined with the hourly cash wage paid by the employer, such that their total earnings are equal to the minimum wage under section 2 of the order, section 3 requires that the cash wage paid by the employer be increased such that the workers' total earnings equal the section 2 minimum wage. *Id.* Consistent with applicable law, if the wage required to be paid under the Service Contract Act (SCA), 41 U.S.C. 6701 *et seq.,* or any other applicable law or regulation is higher than the wage required by section 2 of the order, the employer must pay additional cash wages sufficient to meet the highest wage required to be paid. 86 FR 22836.

Section 4 of Executive Order 14026 provides that the Secretary shall, consistent with applicable law, issue regulations by November 24, 2021, to implement the requirements of the order, including providing both definitions of relevant terms and exclusions from the requirements set forth in the order where appropriate. 86 FR 22836. It also requires that, to the extent permitted by law, within 60 days of the Secretary issuing such regulations, the Federal Acquisition Regulatory Council (FARC) shall amend the Federal Acquisition Regulation (FAR) to provide for inclusion of the contract clause described in section 2(a) of the order in Federal procurement solicitations and contracts subject to the order. *Id.* Additionally, section 4 states that within 60 days of the Secretary issuing regulations pursuant to the order, agencies must take steps, to the extent permitted by law, to exercise any applicable authority to ensure that certain contracts—specifically, contracts for concessions and contracts entered into with the Federal Government in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public—entered into on or after January 30, 2022, consistent with the effective date of such agency action, comply with the requirements set forth in sections 2 and 3 of the order. *Id.* The order further specifies that any regulations issued pursuant to section 4

[1] 29 U.S.C. 214(c) authorizes employers, after receiving a certificate from the WHD, to pay subminimum wages to workers whose earning or productive capacity is impaired by a physical or mental disability for the work to be performed.

of the order should, to the extent practicable, incorporate existing definitions, principles, procedures, remedies, and enforcement processes under the FLSA, 29 U.S.C. 201 *et seq.;* the SCA; the Davis-Bacon Act (DBA), 40 U.S.C. 3141 *et seq.;* Executive Order 13658 of February 12, 2014, ''Establishing a Minimum Wage for Contractors''; and regulations issued to implement that order. 86 FR 22836.[2]

Section 5 of Executive Order 14026 grants authority to the Secretary to investigate potential violations of and obtain compliance with the order. 86 FR 22836. It also explains that Executive Order 14026 does not create any rights under the Contract Disputes Act, 41 U.S.C. 7101 *et seq.,* and that disputes regarding whether a contractor has paid the wages prescribed by the order, as appropriate and consistent with applicable law, shall be disposed of only as provided by the Secretary in regulations issued pursuant to the order. *Id.*

Section 6 of Executive Order 14026 revokes and supersedes certain presidential actions. 86 FR 22836–37. Specifically, section 6 of Executive Order 14026 provides that Executive Order 13838 of May 25, 2018, ''Exemption From Executive Order 13658 for Recreational Services on Federal Lands'' is revoked as of January 30, 2022. *Id.* Section 6 of Executive Order 14026 also states that Executive Order 13658 of February 12, 2014, ''Establishing a Minimum Wage for Contractors'' is ''superseded, as of January 30, 2022, to the extent it is inconsistent with this order.'' *Id.*

Section 7 of Executive Order 14026 establishes that if any provision of the order, or the application of any such provision to any person or circumstance, is held to be invalid, the remainder of the order and the application shall not be affected. 86 FR 22837.

Section 8 of Executive Order 14026 establishes that the order shall apply to ''any new contract; new contract-like instrument; new solicitation; extension or renewal of an existing contract or contract-like instrument; and exercise of an option on an existing contract or contract-like instrument,'' if: (i)(A) It is a procurement contract for services or construction; (B) it is a contract for services covered by the SCA; (C) it is a contract for concessions, including any concessions contract excluded by Department of Labor (the Department) regulations at 29 CFR 4.133(b); or (D) it is a contract entered into with the Federal Government in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public; and (ii) the wages of workers under such contract are governed by the FLSA, the SCA, or the DBA. 86 FR 22837. Section 8 of the order also states that, for contracts covered by the SCA or the DBA, the order shall apply only to contracts at the thresholds specified in those statutes.[3] *Id.* Additionally, for procurement contracts where workers' wages are governed by the FLSA, the order specifies that it shall apply only to contracts that exceed the micro-purchase threshold, as defined in 41 U.S.C. 1902(a),[4] unless expressly made subject to the order pursuant to regulations or actions taken under section 4 of the order. *Id.* The order specifies that it shall not apply to grants; contracts or agreements with Indian Tribes under the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638), as amended; or any contracts expressly excluded by the regulations issued pursuant to section 4(a) of the order. *Id.*

Section 9(a) of Executive Order 14026 provides that the order is effective immediately and shall apply to new contracts; new solicitations; extensions or renewals of existing contracts; and exercises of options on existing contracts, as described in section 8(a) of the order, where the relevant contract will be entered into, the relevant contract will be extended or renewed, or the relevant option will be exercised, on or after: (i) January 30, 2022, consistent with the effective date for the action taken by the FARC pursuant to section 4(a) of the order; or (ii) for contracts where an agency action is taken pursuant to section 4(b) of the order, January 30, 2022, consistent with the effective date for such action. 86 FR 22837.

Section 9(b) of Executive Order 14026 establishes an exception to section 9(a) where agencies have issued a solicitation before the effective date for the relevant action taken pursuant to section 4 of the order and entered into a new contract resulting from such solicitation within 60 days of such effective date. The order provides that, in such a circumstance, such agencies are strongly encouraged, but not required, to ensure that the minimum wages specified in sections 2 and 3 of the order are paid in the new contract. 86 FR 22837–38. The order clarifies, however, that if such contract is subsequently extended or renewed, or an option is subsequently exercised under that contract, the minimum wages specified in sections 2 and 3 of the order shall apply to that extension, renewal, or option. 86 FR 22838.

Section 9(c) also specifies that, for all existing contracts, solicitations issued between the date of the order and the effective dates set forth in that section, and contracts entered into between the date of the order and the effective dates set forth in that section, agencies are strongly encouraged, to the extent permitted by law, to ensure that the hourly wages paid under such contracts are consistent with the minimum wage rates specified in sections 2 and 3 of the order. 86 FR 22838.

Section 10 of Executive Order 14026 provides that nothing in the order shall be construed to impair or otherwise affect the authority granted by law to an executive department or agency, or the head thereof; or the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals. 86 FR 22838. It also states that the order is to be implemented consistent with applicable law and subject to the availability of appropriations. *Id.* Finally, section 10 explains that the order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person. *Id.*

C. Notice of Proposed Rulemaking

On July 22, 2021, the Department published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** inviting comments for a period of 30 days on a proposal to implement the provisions of Executive Order 14026. *See* 86 FR 38816. On August 4, 2021, the Department extended the comment period until August 27, 2021. *See* 86 FR 41907. The Department received approximately 275 comments in response to its NPRM implementing Executive Order 14026. Comments were received from a variety of interested stakeholders, such as labor

[2] The Department recognizes that the FAR has been amended to refer to the Service Contract Act as the ''Service Contract Labor Standards'' statute and the Davis-Bacon Act as the ''Wage Rate Requirements (Construction)'' statute. *See* 79 FR 24192–02, 24193–95 (Apr. 29, 2014). Consistent with the text of Executive Order 14026, as well as with Executive Order 13658 and its implementing regulations, the Department refers to these laws in this rule as the Service Contract Act and the Davis-Bacon Act, respectively.

[3] The prevailing wage requirements of the SCA apply to covered prime contracts in excess of $2,500. *See* 41 U.S.C. 6702(a)(2) (recodifying 41 U.S.C. 351(a)). The DBA applies to covered prime contracts that exceed $2,000. *See* 40 U.S.C. 3142(a). There is no value threshold requirement for subcontracts awarded under such prime contracts.

[4] 41 U.S.C. 1902(a) currently defines the micro-purchase threshold as $10,000.

organizations; contractors and contractor associations; worker advocates; contracting agencies; small businesses; and workers.

II. Discussion of the Final Rule

A. Purpose and Legal Authority

President Biden issued Executive Order 14026 pursuant to his authority under ''the Constitution and the laws of the United States,'' expressly including the Federal Property and Administrative Services Act (Procurement Act), 40 U.S.C. 101 *et seq.* 86 FR 22835. The Procurement Act authorizes the President to ''prescribe policies and directives that the President considers necessary to carry out'' the statutory purposes of ensuring ''economical and efficient'' government procurement and administration of government property. 40 U.S.C. 101, 121(a). Executive Order 14026 delegates to the Secretary the authority to issue regulations to ''implement the requirements of this order.'' 86 FR 22836. The Secretary has delegated his authority to promulgate these regulations to the Administrator of the Wage and Hour Division (WHD) and to the Deputy Administrator of the WHD if the Administrator position is vacant. Secretary's Order 01–2014 (Dec. 19, 2014), 79 FR 77527 (published Dec. 24, 2014); Secretary's Order 01–2017 (Jan. 12, 2017), 82 FR 6653 (published Jan. 19, 2017).

The Department received many comments, such as those submitted by the American Federation of Labor and Congress of Industrial Organizations (AFL–CIO) and Communications Workers of America, AFL–CIO (CWA), the National Women's Law Center, the National Employment Law Project (NELP), Restaurant Opportunities Centers (ROC) United, and the Shriver Center on Poverty Law, expressing strong support for Executive Order 14026 and for raising the minimum wage paid to workers performing on or in connection with federal contracts. Many of these commenters, such as the Center for American Progress and the Center for Law and Social Policy, commended the Department's NPRM as a ''thorough'' and appropriate implementation of Executive Order 14026. Although the Associated General Contractors of America (AGC) recommended some substantive changes to the interpretations set forth in the Department's NPRM, it also expressed its appreciation to the Department ''for generally following the provisions of the previous rulemaking increasing the minimum wage for federal contractors'' and expressed its support for ''the retention of the existing guidelines and definitions,'' where appropriate.

However, the Department also received submissions from several commenters, including Associated Builders and Contractors (ABC), the Home Care Association of America, the Pacific Legal Foundation, the U.S. Chamber of Commerce (Chamber), and U.S. House of Representatives Members Virginia Foxx and Fred Keller, expressing strong opposition to Executive Order 14026 and/or questioning its legality and stated purpose. The purpose of this rulemaking is to implement Executive Order 14026, and therefore comments questioning the legal authority and rationale underlying the President's issuance of the Executive order are not within the scope of this rulemaking action.

A few commenters, such as ABC and the Chamber, argued that the Department lacks the authority to issue or enforce this rule because it impermissibly conflicts with congressional enactments by establishing a minimum wage that overrides or conflicts with the statutory wage requirements and methodologies set forth in the DBA, FLSA, and SCA. For example, the Chamber asserted that ''the new minimum wage, and the future wages increased through indexing, will likely override the already established, and statutorily driven, method for calculating wages under the [DBA] and [SCA]. These two laws specifically require a locally prevailing wage be paid for the different employee job descriptions on work covered by them.'' ABC made a similar argument, contending that the Department has ''all the discretion necessary to decline to enforce the E.O. in a manner that is inconsistent with congressional authority (*i.e.,* by declining to set a new minimum wage for any employee covered by the DBA, SCA or FLSA that differs from the congressionally mandated minimum wages under the foregoing statutes).''

To the extent the comments above are addressing the scope of the Department's rulemaking authority, the Department strongly disagrees with them. While it is true that section 4 of Executive Order 14026 states that the Department's regulations ''should, to the extent practicable, incorporate existing definitions, principles, procedures, remedies, and enforcement processes'' under the DBA, FLSA, SCA, and Executive Order 13658, that section of the order must be read in harmony with the entire order, particularly with sections 1 and 8. When read holistically, Executive Order 14026 clearly does not authorize the Department to essentially nullify the policy, premise, and essential coverage protections of the order, as suggested by ABC, by declining to extend the Executive order minimum wage to any worker covered by the DBA, FLSA, or SCA where such rate differs from the applicable minimum wages established under those laws. Indeed, in order to effectuate the purposes of Executive Order 14026, it must apply to workers who would otherwise be subject to lower minimum wage requirements under the DBA, FLSA, and/or SCA. As ABC itself recognizes, the DBA, FLSA, and SCA establish ''minimum'' wage rates; it is therefore not inconsistent with these wage floors to establish a higher minimum wage rate.

As the Department explained in the NPRM, and consistent with the relevant discussion in the rulemaking implementing Executive Order 13658, the minimum wage requirements of Executive Order 14026 are separate and distinct legal obligations from the prevailing wage requirements of the DBA and SCA. If a contract is covered by the DBA or SCA and the wage rate on the applicable DBA or SCA wage determination for the classification of work the worker performs is less than the applicable Executive order minimum wage, the contractor must pay the Executive order minimum wage in order to comply with the order and this part. If, however, the applicable DBA or SCA prevailing wage rate exceeds the Executive order minimum wage rate, the contractor must pay that prevailing wage rate to the DBA- or SCA-covered worker in order to be in compliance with the DBA or SCA.[5]

The minimum wage requirements of the DBA and SCA do not preclude the Department from implementing or enforcing the minimum wage requirement of Executive Order 14026. The DBA itself expressly states that it ''does not supersede or impair any authority otherwise granted by federal law to provide for the establishment of specific wage rates.'' 40 U.S.C. 3146. The DBA thus sets a wage floor for covered construction contracts and explicitly contemplates laws that exceed the floor. Likewise, the legislative history of the SCA reflects that the SCA

[5] Moreover, if a contract is covered by a state prevailing wage law that establishes a higher wage rate applicable to a particular worker than the Executive order minimum wage, the contractor must pay that higher prevailing wage rate to the worker. Section 2(c) of the order expressly provides that it does not excuse noncompliance with any applicable State prevailing wage law or any applicable law or municipal ordinance establishing a minimum wage higher than the Executive order minimum wage. *See* 86 FR 22836.

prevailing wage requirement can co-exist with other applicable laws requiring the payment of higher minimum wages. The reports accompanying the 1965 enactment of the SCA, for example, make clear that contractors must pay ''no less'' than the prevailing wage determined by the Secretary under the SCA. *See* H.R. Rep. No. 89–948, at 3 (1965); S. Rep. No. 89–798 (1965), *reprinted in* 1965 U.S.C.C.A.N. 3737. Congressional reports accompanying subsequent amendments to the SCA reflect that contractors must pay ''at least'' the prevailing wage. S. Rep. No. 92–1131 (1972), *reprinted in* 1972 U.S.C.C.A.N. 3534; H.R. Rep. No. 92–1251, at 3 (1972); H.R. Rep. No. 94–1571, at 1 (1976). These statements demonstrate that the SCA's prevailing wage rates were not intended to preclude higher wage rates required by other laws. The DBA, SCA, and Executive Order 14026 can and should thus be viewed as complementary and co-existing rather than in conflict because it is possible for contractors to comply with all of the laws; neither the DBA nor SCA reflects an intent to preclude application of a higher wage requirement under other laws, including this Executive order.

Similarly, the Department strongly disagrees with the Chamber's argument that the Executive order and the Department's NPRM conflict with the FLSA. As a threshold matter, the Department notes that the FLSA itself expressly states that ''[n]o provision of this chapter or of any order thereunder shall excuse noncompliance with any Federal or State law or municipal ordinance establishing a minimum wage higher than the minimum wage established under this chapter.'' 29 U.S.C. 218(a). Just as the FLSA's minimum wage requirement does not preclude application of a higher prevailing wage rate requirement under the DBA or SCA when both laws apply to a particular worker, neither does the higher minimum wage requirement of Executive Order 14026 conflict with the FLSA's minimum wage floor. Nonetheless, the Chamber asserts that such a conflict exists because Executive Order 14026, for example, ''would eliminate the credit employers are allowed to take in compensating tipped employees. . . . and would eliminate the exemption for employees with disabilities to be paid a wage less than the minimum wage.'' The FLSA permits, but does not require, employers satisfying relevant requirements to take a credit against tips; an employer can comply with the requirements of both the FLSA and Executive Order 14026 by paying the full Executive order minimum wage for covered federal contract work. An FLSA-covered employer that performs work on a covered contract must abide by the higher cash wage floor for such contract work to comply with Executive Order 14026 and this part; however, neither the order nor this rule affect how the employer complies with the FLSA for work not covered by the order. Similarly, the FLSA permits, but does not require, employers satisfying relevant requirements to pay subminimum wages pursuant to an FLSA section 14(c) certificate; an employer can comply with the requirements of both the FLSA and Executive Order 14026 by paying the full Executive order minimum wage for covered federal contract work.[6] Moreover, employers whose workers are performing on or in connection with a contract covered by Executive Order 14026 may continue to pay subminimum commensurate wages to workers with disabilities where authorized by an FLSA section 14(c) certificate to the extent that the commensurate wage rates are not lower than the applicable Executive order minimum wage. Executive Order 14026 applies to federal contractors, not the entire universe of employers covered by the FLSA who employ tipped workers or workers with disabilities under FLSA section 14(c) certificates, and the Executive order only applies to workers performing work on or in connection with a covered contract.

The Department is the federal agency charged with administering and enforcing the DBA, FLSA, and SCA; after careful consideration of the comments, the Department has determined that the minimum wages provided for under those statutes do not operate to preclude the Department from issuing this final rule to implement the requirements of Executive Order 14026.[7]

Other commenters, such as the Colorado River Outfitters Association, Colorado Ski Country USA, Conduent Federal Solutions, LLC (Conduent), and the National Federation of Independent Business (NFIB), request that the Department either decline to implement Executive Order 14026, modify the amount of the Executive Order 14026 minimum wage rate, change the effective date for the wage rate, or phase in the wage rate over a number of years, for at least certain subsets of covered contracts. Executive Order 14026 clearly directs the Department to issue regulations implementing its requirements. *See* 86 FR 22836. The Executive order expressly requires that, as of January 30, 2022, workers performing on or in connection with covered contracts must be paid $15 per hour unless exempt. *See* 86 FR 22835–38. There is no indication in the Executive order that the Department has authority to modify the amount or timing of the minimum wage requirement, except where the Department is expressly required to implement the future annual inflation-based adjustments to the wage rate pursuant to the methodology set forth in the order.

The Department also received several comments, including from the International Brotherhood of Teamsters (Teamsters), requesting that the President take other executive actions or the Department pursue other initiatives to protect federal contract workers. While the Department appreciates and will consider such recommendations, comments requesting further executive actions or other Departmental actions are beyond the scope of this rulemaking.

All other comments, including comments raising specific concerns or questions regarding interpretations of the Executive order set forth in the Department's NPRM, will be addressed in the following section-by-section analysis of the final rule. After

[6] The Department notes that some states and localities have enacted laws that eliminate the tip credit and/or that prohibit the payment of subminimum wages to workers with disabilities. The FLSA does not preclude such laws establishing higher wage requirements and does not excuse noncompliance with such laws. The FLSA likewise does not prohibit application of a higher minimum wage requirement for federal contractors under Executive Order 14026. Indeed, the FLSA itself explicitly contemplates that other applicable laws may require greater wage payments. *See* 29 U.S.C. 218(a).

[7] A Department of the Army attorney-advisor similarly commented that application of Executive Order 14026 to intergovernmental support agreements (IGSAs) governed by 10 U.S.C. 2679 would be unlawful because that statute authorizes the use of wage grade rates normally paid by the state or local government. For the reasons explained above, the Department does not perceive any conflict between that statute and Executive Order 14026. Notably, 10 U.S.C. 2679 expressly permits, but does not require, the use of such wage grade rates. *See* 10 U.S.C. 2679(a)(2) (stating that an IGSA ''may use'' state or local government wage grades). To the extent that an IGSA qualifies as a covered contract under Executive Order 14026, the contractor would be required to pay at least the applicable Executive order rate to workers performing on or in connection with the covered contract in order to comply with the order and this part. Where the wage grade rates normally paid by the state or local government exceed the wage floor established by Executive Order 14026, the order would have no applicability and the workers should be paid the higher rate. *See* § 23.50(c). Because the Department concludes that application of the Executive order to such IGSAs is not inconsistent with 10 U.S.C. 2679, the Department declines to create a special exemption for IGSAs.

considering all timely and relevant comments received in response to the July 22, 2021 NPRM, the Department is issuing this final rule to implement the provisions of Executive Order 14026.

B. Discussion of Final Rule Provisions

The Department's final rule, which amends Title 29 of the Code of Federal Regulations (CFR) by adding part 23 and modifying part 10, establishes standards and procedures for implementing and enforcing Executive Order 14026. Subpart A of part 23 relates to general matters, including the purpose and scope of the rule, as well as the definitions, coverage, and exclusions that the rule provides pursuant to the Executive order. It also sets forth the general minimum wage requirement for contractors established by the Executive order, an antiretaliation provision, a prohibition against waiver of rights, and a severability clause. Subpart B establishes requirements for contracting agencies and the Department to comply with the Executive order. Subpart C establishes requirements for contractors to comply with the Executive order. Subparts D and E specify standards and procedures related to complaint intake, investigations, remedies, and administrative enforcement proceedings. Appendix A contains a contract clause to implement Executive Order 14026. An additional appendix, which will not publish in 29 CFR part 23, sets forth a poster regarding the Executive Order 14026 minimum wage for contractors with FLSA-covered workers performing work on or in connection with a covered contract. The Department also finalizes a few conforming revisions to the existing regulations at part 10 implementing Executive Order 13658 to fully implement the requirements of Executive Order 14026 and provide additional clarity to the regulated community.

The following section-by-section discussion of this final rule summarizes the provisions proposed in the NPRM, addresses the comments received on each section, and sets forth the Department's response to such comments for each section.

Part 23 Subpart A—General

Subpart A of part 23 pertains to general matters, including the purpose and scope of the rule, as well as the definitions, coverage, and exclusions that the rule provides pursuant to the order. Subpart A also includes the Executive Order 14026 minimum wage requirement for contractors, an antiretaliation provision, and a prohibition against waiver of rights.

Section 23.10 Purpose and Scope

Proposed § 23.10(a) explained that the purpose of the proposed rule was to implement Executive Order 14026, both in terms of its administration and enforcement. The paragraph emphasized that the Executive order assigns responsibility for investigating potential violations of and obtaining compliance with the Executive order to the Department of Labor.

Proposed § 23.10(b) explained the underlying policy of Executive Order 14026. First, the paragraph repeated a statement from the Executive order that the Federal Government's procurement interests in economy and efficiency are promoted when the Federal Government contracts with sources that adequately compensate their workers. The proposed rule elaborated that raising the minimum wage enhances worker productivity and generates higher-quality work by boosting workers' health, morale, and effort; reducing absenteeism and turnover; and lowering supervisory and training costs. It is for these reasons that the Executive order concludes that raising, to $15.00 per hour, the minimum wage for work performed by parties who contract with the Federal Government will lead to improved economy and efficiency in Federal procurement. As explained more fully in section IV.C.4, the Department stated its belief that, by increasing the quality and efficiency of services provided to the Federal Government, the Executive order will improve the value that taxpayers receive from the Federal Government's investment.

Proposed § 23.10(b) further explained the general requirement established in Executive Order 14026 that new covered solicitations and contracts with the Federal Government must include a clause, which the contractor and any covered subcontractors shall incorporate into lower-tier subcontracts, requiring, as a condition of payment, that the contractor and any subcontractors pay workers performing work on or in connection with the contract or any subcontract thereunder at least: (i) $15.00 per hour beginning January 30, 2022; and (ii) beginning January 1, 2023, and annually thereafter, an amount determined by the Secretary pursuant to the Executive order. Proposed § 23.10(b) also clarified that nothing in Executive Order 14026 or part 23 is to be construed to excuse noncompliance with any applicable Federal or state prevailing wage law or any applicable law or municipal ordinance establishing a minimum wage higher than the minimum wage established under the Executive order.

The Department received some comments addressing the purpose and scope provisions of the rule set forth at proposed § 23.10(a) and (b). Several commenters, including ABC, the Chamber, and the Pacific Legal Foundation, contended that Executive Order 14026 does not promote economy and efficiency in Federal Government procurement and challenged the evidentiary and legal basis for the determinations set forth in the Executive order that are reflected in proposed § 23.10. As noted above, comments questioning the President's legal authority to issue the Executive order under the Procurement Act are not within the scope of this rulemaking action. To the extent that such comments object to or challenge specific conclusions made by the Department in its regulatory impact analysis and regulatory flexibility analysis set forth in the NPRM, those comments are addressed in sections IV and V of the preamble to this final rule.

The AFL–CIO and CWA, among other commenters, urged the Department to amend proposed § 23.10(b) to clarify that nothing in Executive Order 14026 excuses noncompliance with higher wages required under a collective bargaining agreement (CBA) and that a CBA or wage law requiring a minimum wage lower than the order's requirement does not excuse noncompliance with the order. The Center for American Progress requested similar clarification. The Chamber, on the other hand, asserted that the ''[a]bsence of any allowance for collective bargaining agreements (CBAs) with a wage rate lower than $15 per hour and the inflation adjusted wage in future years is another problem'' that existed under Executive Order 13658 and its regulations and will be ''exacerbate[d]'' under Executive Order 14026 and this part. The Chamber argued that, by requiring a higher wage rate ''than what they could achieve through the bargaining process, unions will be getting something without having to give anything up,'' thereby disrupting the ''delicate balance of competing interests'' and wage certainty reflected in a CBA.

Executive Order 14026 does not reflect any intent to permit a CBA rate lower than the Executive order minimum wage rate to govern the wages of workers while performing on or in connection with contracts covered by the order. The Department notes that this interpretation is consistent with the regulations interpreting Executive Order 13658. Moreover, in the event that a

collectively bargained wage rate is below the applicable DBA rate, a DBA-covered contractor must pay no less than the applicable DBA rate to covered workers on the project. Although a successor contractor on an SCA-covered contract is required under the SCA only to pay wages and fringe benefits not less than those contained in the predecessor contractor's CBA even if an otherwise applicable area-wide SCA wage determination contains higher wage and fringe benefit rates, that requirement is derived from a specific statutory provision that expressly bases SCA obligations on the predecessor contractor's CBA wage and fringe benefit rates in specific circumstances. *See* 41 U.S.C. 6707(c); 29 CFR 4.1b. Moreover, where an SCA-covered contractor's CBA rate is not the applicable SCA rate pursuant to that statutory provision and is below that applicable SCA rate, the contractor must pay no less than the applicable SCA rate to covered workers on the project.

Accordingly, the Department concludes that permitting payment of CBA wage rates below the Executive Order 14026 minimum wage is inconsistent with the order; the Department thus declines to suspend application of the Executive order minimum wage for contractors that have negotiated a CBA wage rate lower than the order's minimum wage. This conclusion, as well as the Department's related determination that nothing in the Executive order excuses noncompliance with higher wages required under a CBA, is reflected in the contract clause set forth in Appendix A. Specifically, paragraph (f) of the Department's contract clause expressly provides: ''Nothing herein shall relieve the contractor of any other obligation under Federal, state or local law, or under contract, for the payment of a higher wage to any worker, nor shall a lower prevailing wage under any such Federal, State, or local law, or under contract, entitle a contractor to pay less than $15.00 (or the minimum wage as established each January thereafter) to any worker.'' After careful consideration of the comments, however, the Department has determined to also add a corresponding clarification to § 23.50(c), which is the regulatory provision discussing Executive Order 14026's minimum wage rate and its relation to other laws. To ensure full consistency between the regulatory text and the contract clause on this point, the Department therefore amends § 23.50(c) by adding ''or any applicable contract'' to the provision, such that it reads as follows: ''Nothing in the Executive Order or this part shall excuse noncompliance with any applicable Federal or state prevailing wage law or any applicable law or municipal ordinance, or any applicable contract, establishing a minimum wage higher than the minimum wage established under the Executive Order and this part.''

In its comment, Maximus recommended that the Department expand the purpose and scope discussion set forth in § 23.10 to address procedures dealing with wage compression that may result from the Executive order minimum wage increase; establish prevailing wage determination processes for remote workers based on the worker's locality rather than the location of the work; outline wage determination processes to eliminate monopsony impacts in localities where the contractor's wages are the locality-based prevailing wage; and define procedural changes to better align the Wage and Hour Division, contracting officers, and contractors' responsibilities and actions. Maximum's recommendations largely pertain to the wage determination processes and enforcement schemes under the DBA and SCA. This rulemaking is solely dedicated to implementing Executive Order 14026 and thus does not alter the Department's statutory or regulatory obligations, including its responsibility and protocols for determining prevailing wage rates, under the DBA and SCA. The Department appreciates such proposals and will carefully consider the suggestions provided by Maximus as part of the Department's continual evaluation of its wage determination and enforcement programs under the DBA and SCA,[8] but declines to make such modifications in this final rule. The Department specifically notes that Executive Order 14026 does not empower the Department to change prevailing wage rates established under the DBA and SCA or to establish an Executive order minimum wage rate that is higher than the rate set forth in the order, except where authorized to do so based on annual inflation increases pursuant to the order's methodology.

After consideration of these comments, and based on the clarifications made elsewhere in the regulatory text and contract clause, the Department adopts § 23.10(a) and (b) as proposed.

Proposed § 23.10(c) outlined the scope of the rule and provided that neither Executive Order 14026 nor part 23 creates or changes any rights under the Contract Disputes Act or any private right of action. The Department explained that it does not interpret the Executive order as limiting existing rights under the Contract Disputes Act. This provision also restated the Executive order's directive that disputes regarding whether a contractor has paid the minimum wages prescribed by the Executive order, to the extent permitted by law, shall be disposed of only as provided by the Secretary in regulations issued under the Executive order. The provision clarified, however, that nothing in the Executive order is intended to limit or preclude a civil action under the False Claims Act, 31 U.S.C. 3730, or criminal prosecution under 18 U.S.C. 1001. Finally, this paragraph clarified that neither the Executive order nor the proposed rule would preclude judicial review of final decisions by the Secretary in accordance with the Administrative Procedure Act, 5 U.S.C. 701 *et seq.*

The Department received some comments from stakeholders such as the AFL–CIO and CWA, National Employment Lawyers Association (NELA), NELP, the Service Employees International Union (SEIU), and the Teamsters, requesting that the Department amend proposed § 23.10(c) by adding a statement that the Department does not intend for these regulations to displace any state or local law meant to enforce federal minimum wage or prevailing wage rates, including the minimum rates set forth in Executive Order 14026. The Department appreciates this feedback and confirms that neither the Executive order nor this part are intended to modify any existing private rights of action that workers may possess under other laws. The Department believes that this interpretation is already reflected in the first sentence of the proposed regulatory text at § 23.10(c), which states that ''[n]either Executive Order 14026 nor this part creates or changes any rights under the Contract Disputes Act, 41 U.S.C. 7101 *et seq.,* or any private right of action.'' However, to further improve clarity, the Department is modifying this provision of the regulatory text to add ''that may exist under other applicable laws'' at the end of the sentence. Other than this clarifying edit, the Department adopts this provision as proposed.

[8] The Department notes that it plans to engage in a rulemaking to update and modernize the regulations implementing the DBA in the near future. *See https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202104&RIN=1235-AA40.* The Department described a similar initiative to update the SCA regulations as a ''long term action'' in WHD's Spring 2021 regulary agenda. *See https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202104&RIN=1235-AA38.*

Section 23.20 Definitions

Proposed § 23.20 defined terms for purposes of this rule implementing Executive Order 14026. Section 4(c) of the Executive order instructs that any regulations issued pursuant to the order should ''incorporate existing definitions'' under the FLSA, the SCA, the DBA, Executive Order 13658, and the regulations at 29 CFR part 10 implementing Executive Order 13658 ''to the extent practicable.'' 86 FR 22836. Most of the definitions set forth in the Department's proposed rule were therefore based on either Executive Order 14026 itself or the definitions of relevant terms set forth in the statutory text or implementing regulations of the FLSA, SCA, DBA, or Executive Order 13658. Several proposed definitions adopted or relied upon definitions published by the FARC in section 2.101 of the FAR. 48 CFR 2.101. The Department noted in the NPRM that, while the proposed definitions discussed in the proposed rule would govern the implementation and enforcement of Executive Order 14026, nothing in the proposed rule was intended to alter the meaning of or to be interpreted inconsistently with the definitions set forth in the FAR for purposes of that regulation.

As a general matter, some commenters, such as the SEIU, stated that the Department appropriately and reasonably defined the terms of Executive Order 14026. The AFL–CIO and CWA, for example, noted that they ''especially endorse the NPRM's broad definitions,'' particularly the Department's proposed definitions of the terms *contract or contract-like instrument* and *new contract.* AGC expressed appreciation to the Department ''for generally following the provisions of the previous rulemaking increasing the minimum wage for federal contractors'' and expressed its support for ''the retention of the existing guidelines and definitions,'' noting that ''[c]larity and consistency are necessary for contractors to easily come into compliance with the rulemaking, plan for the future of their businesses, and deliver quality[,] fiscally accurate, and timely projects for federal owners.'' Other individuals and organizations submitted comments supporting, opposing, or questioning specific proposed definitions that are addressed below.

The Department proposed to define the term *agency head* to mean the Secretary, Attorney General, Administrator, Governor, Chairperson, or other chief official of an executive agency, unless otherwise indicated, including any deputy or assistant chief official of an executive agency or any persons authorized to act on behalf of the agency head. The proposed definition was based on the definition of the term set forth in section 2.101 of the FAR, *see* 48 CFR 2.101, and was identical to the definition provided in the implementing regulations for Executive Order 13658, *see* 29 CFR 10.2. The Department did not receive any comments addressing the term *agency head* and thus the Department adopts the definition of that term as it was originally proposed.

The Department proposed to define *concessions contract* (or *contract for concessions*) to mean a contract under which the Federal Government grants a right to use Federal property, including land or facilities, for furnishing services. This proposed definition did not contain a limitation regarding the beneficiary of the services, and such contracts may be of direct or indirect benefit to the Federal Government, its property, its civilian or military personnel, or the general public. *See* 29 CFR 4.133. The proposed definition covered but was not limited to all concessions contracts excluded from the SCA by Departmental regulations at 29 CFR 4.133(b). This definition was taken from 29 CFR 10.2, which defined the same term for purposes of Executive Order 13658.

Some commenters expressed concern or requested clarification regarding application of this definition to specific factual circumstances; such comments are addressed below in the preamble discussion of the coverage of concessions contracts. The Department did not receive any comments suggesting revisions to the proposed definition of this term and thus adopts the definition set forth in the NPRM.

The Department proposed to define *contract* and *contract-like instrument* collectively for purposes of the Executive order as an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law. The proposed definition included, but was not limited to, a mutually binding legal relationship obligating one party to furnish services (including construction) and another party to pay for them. The proposed definition of the term *contract* broadly included all contracts and any subcontracts of any tier thereunder, whether negotiated or advertised, including any procurement actions, lease agreements, cooperative agreements, provider agreements, intergovernmental service agreements, service agreements, licenses, permits, or any other type of agreement, regardless of nomenclature, type, or particular form, and whether entered into verbally or in writing.

The Department indicated in the NPRM that the proposed definition of the term *contract* was intended to be interpreted broadly to include, but not be limited to, any contract within the definition provided in the FAR or applicable Federal statutes. The proposed definition would also include, but was not to be limited to, any contract that may be covered under any Federal procurement statute. The Department noted that under this definition contracts may be the result of competitive bidding or awarded to a single source under applicable authority to do so. The proposed definition also explained that, in addition to bilateral instruments, contracts included, but were not limited to, awards and notices of awards; job orders or task letters issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; exercised contract options; and bilateral contract modifications. The proposed definition also specified that, for purposes of the minimum wage requirements of the Executive order, the term *contract* included contracts covered by the SCA, contracts covered by the DBA, concessions contracts not otherwise subject to the SCA, and contracts in connection with Federal property or land and related to offering services for Federal employees, their dependents, or the general public, as provided in section 8(a) of the Executive order. *See* 86 FR 22837. The proposed definition of *contract* included in the NPRM was identical to the definition of *contract* in the regulations implementing Executive Order 13658, *see* 29 CFR 10.2, except that it included ''exercised contract options'' as an example of a contract. The addition of this example reflected that, unlike Executive Order 13658, Executive Order 14026 expressly applies to option periods on existing contracts that are exercised on or after January 30, 2022. *See* 86 FR 22837.

As explained in the Department's final rule implementing Executive Order 13658, this definition of *contract* was originally derived from the definition of the term *contract* set forth in Black's Law Dictionary (9th ed. 2009) and section 2.101 of the FAR (48 CFR 2.101), as well as the descriptions of the term *contract* that appear in the SCA's regulations at 29 CFR 4.110 and 4.111, 4.130. *See* 79 FR 60638–41. The Department noted that the fact that a legal instrument constitutes a *contract* under this definition does not mean that

the contract is covered by the Executive order. In order for a contract to be covered by the Executive order and this rule, the contract must satisfy all of the following prongs: (1) It must qualify as a *contract* or *contract-like instrument* under the definition set forth in part 23; (2) it must fall within one of the four specifically enumerated types of contracts set forth in section 8(a) of the order and § 23.30; and (3) it must be a ''new contract'' pursuant to the definition described below. Further, in order for the minimum wage protections of the Executive order to extend to a particular worker performing work on or in connection with a covered contract, that worker's wages must also be governed by the DBA, SCA, or FLSA. For example, although an agreement between a contracting agency and a hotel located on private property pursuant to which the hotel accepts the General Services Administration (GSA) room rate for Federal Government workers would likely be regarded as a ''contract'' or ''contract-like instrument'' under the Department's proposed definition, such an agreement would not be covered by the Executive order and part 23 because it is not subject to the DBA or SCA, is not a concessions contract, and is not entered into in connection with Federal property or lands. Similarly, a permit issued by the National Park Service (NPS) to an individual for purposes of conducting a wedding on Federal land would qualify as a ''contract'' or ''contract-like instrument'' but would not be subject to the Executive order because it would not be a contract covered by the SCA or DBA, a concessions contract, or a contract in connection with Federal property related to offering services to Federal employees, their dependents, or the general public.

Numerous commenters, such as the Strategic Organizing Center and the Teamsters, expressed their support for the Department's proposed definition of the terms *contract* and *contract-like instrument.* NELP, for example, noted that the definition ''mirrors that of the SCA and DBA'' and is consistent with ''the definition established by the existing minimum wage policy for contracted workers.'' In supporting the inclusion of contract-like instruments within the scope of coverage of Executive Order 14026, NELP agreed ''that it is best for the efficiency of federal agencies and for the strongest return on public revenues to expand the types of formal relationships under which contracted work is performed.'' The Teamsters similarly endorsed the proposed definition as ''consistent both with the Order and the definitions contained in the SCA and DBA'' and noted that the proposal ''appropriately seeks to include the full range of contracts and other government procurement arrangements to effectuate the purposes of'' Executive Order 14026.

A few commenters, such as the SEIU and the Teamsters, requested that the proposed definition of *contract or contract-like instrument* be amended to specifically include task orders placed under multiple-award contracts (MACs), such as GSA Schedules, Government Wide Acquisition Contracts (GWACs), and other indefinite-delivery, indefinite-quantity (IDIQ) contracts. SourceAmerica requested that the Department clarify the proposed definition of *contract or contract-like instrument* to expressly include contracts between the Federal Government and state and local governments entered into through intergovernmental support agreements (IGSAs).

Other commenters, including the Chamber, acknowledged that the proposed definition is consistent with the regulations implementing Executive Order 13658 but expressed concern that the term ''contract-like instrument'' will nevertheless cause confusion because there will be more contractors and workers affected by Executive Order 14026 who are unfamiliar with the term. Numerous commenters, particularly in the outdoor recreational industries, similarly opposed the breadth of the proposed definition of *contract* set forth in the NPRM because it would include non-procurement contracts, such as permits and licenses and other types of legal arrangements in which a contractor pays money to the Federal Government in order to operate.

With respect to all comments regarding the broad scope of the proposed collective definition of the terms *contract* and *contract-like instrument,* the Department agrees that its proposed definition is intended to encompass a wide variety of contractual agreements, even though the Department recognizes that not all such agreements will actually be subject to the Executive order, as explained more fully below. The proposed definition of these terms could be applied to an expansive range of different types of legal arrangements, including licenses, permits, task orders, and contracts entered into through IGSAs. (To maintain consistency with the definition of ''contract'' as it appears in the regulations implementing Executive Order 13658, the Department declines commenters' requests to modify the regulatory text here to explicitly reference task orders and contracts entered into pursuant to IGSAs as examples of legal instruments that may fall within the scope of the definition. However, as in the Department's 2014 rulemaking to implement Executive Order 13658, the Department agrees that this definition could indeed be applied to such legal instruments and affirms that the list of examples of legal arrangements qualifying as ''contracts'' provided in the definition is illustrative and non-exhaustive.) Indeed, and consistent with its use in Executive Order 13658, the use of the term *contract-like instrument* in Executive Order 14026 underscores that the Order was intended to be of potential applicability to virtually any type of agreement with the Federal Government that is contractual in nature.

With respect to commenter concerns regarding use of the purportedly unfamiliar term ''contract-like instrument,'' the Department acknowledges that the term ''contract-like instrument'' is not used in the FLSA, SCA, DBA, or FAR. For this reason, the Department has defined the term collectively with the well-known term ''contract'' in a manner that should be generally known and understood by the contracting community. The Department notes that the term ''contract-like instrument'' was expressly used in both Executive Order 13658 and Executive Order 14026 and is defined, collectively with the term *contract,* in the Department's regulations implementing Executive Order 13658, *see* 29 CFR 10.2. That definition has been codified in the regulations since 2015, and the Department expects that most contracting agencies and contractors affected by this rulemaking are familiar with the definition. The use of the term ''contract-like instrument'' in Executive Order 14026 reflects that the order is intended to cover all arrangements of a contractual nature, including those arrangements that may not be universally regarded as a ''contract'' in other contexts, such as special use permits issued by the Forest Service, Commercial Use Authorizations issued by the National Park Service, and outfitter and guide permits issued by the Bureau of Land Management and the U.S. Fish and Wildlife Service.

The Department acknowledges that the term *contract* does not apply to an arrangement or an agreement that is truly not contractual. However, Executive Order 14026 is intended to sweep broadly to apply to traditional procurement construction and service contracts as well as a broad range of concessions agreements and agreements

in connection with Federal property or lands and related to offering services, regardless of whether the parties involved typically consider such arrangements to be ''contracts'' and regardless of whether such arrangements are characterized as ''contracts'' for purposes of the specific programs under which they are administered.

Moreover, and consistent with the relevant discussion in the Executive Order 13658 rulemaking, the Department believes that the use of the term ''contract-like instrument'' in Executive Order 14026 is intended to prevent disputes or extended discussions between contracting agencies and contractors regarding whether a particular legal arrangement qualifies as a ''contract'' for purposes of coverage by the order and this part. The broad definition set forth in this rule will help facilitate more efficient determinations by contractors, contracting officers, and the Department as to whether a particular legal instrument is covered. The Department thus affirms that the term ''contract-like instrument'' is best understood contextually in conjunction with the well-known term ''contract'' and thus defines the terms collectively.

The Department has carefully considered all of the comments received on the proposed collective definition of the terms *contract* and *contract-like instrument,* and adopts the definition as proposed.

Importantly, however, and as explained in the NPRM, the fact that a legal instrument qualifies as a *contract or contract-like instrument* under this definition does not necessarily mean that such contract is subject to Executive Order 14026. *See* 86 FR 38828. In addition to qualifying as a *contract or contract-like instrument,* such contract must also fall within one of the four specifically enumerated types of contracts set forth in section 8(a) of the order and § 23.30, and must qualify as a *new contract* pursuant to the definition explained below. (Moreover, in order for the minimum wage protections of the Executive order to extend to a particular worker performing work on or in connection with a covered contract, that worker's wages must also be governed by the DBA, SCA, or FLSA.) The Department believes that the NPRM implementing Executive Order 14026 clearly explained the proposed definition and this basic test for contract coverage, but as requested by commenters, the Department has endeavored to provide additional clarification and examples of covered contracts in its preamble discussion of the coverage provisions set forth at § 23.30 in this final rule.

The Department also recognizes that a few commenters, including the Affiliated Outfitter Associations (AOA), suggested that the Department should include separate definitions of the terms ''subcontract'' and ''subcontractor'' in the final rule. In the proposed rule, the Department stated that the proposed definition of the term *contract* broadly included all contracts and any subcontracts of any tier thereunder and also provided that the term *contractor* referred to both a prime contractor and all of its subcontractors of any tier on a contract with the Federal Government. The applicability of Executive Order 14026 to subcontracts is discussed in greater detail in the discussion of the rule's coverage provisions below, but with respect to these commenters' specific proposal to separately define the terms ''subcontract'' and ''subcontractor,'' the Department declines to define those terms in the final rule because it could generate significant confusion for contracting agencies, contractors, and workers. The Department notes that many commenters strongly urged the Department to align its definitions and coverage provisions with those set forth in the SCA, the DBA, Executive Order 13658, and the FAR to ensure compliance and to minimize confusion. Neither Executive Order 13658 nor the FAR nor the regulations implementing the DBA or SCA provide independent definitions of the terms ''subcontract'' and ''subcontractor.'' The SCA's regulations, for example, simply provide that the definition of the term ''contractor'' includes a subcontractor whose subcontract is subject to provisions of the SCA. *See* 29 CFR 4.1a(f).

As with the DBA, SCA, and Executive Order 13658, all of the provisions of Executive Order 14026 that are applicable to covered prime contracts and contractors apply with equal force to covered subcontracts and subcontractors, except for the value threshold requirements set forth in section 8(b) of the order that only pertain to prime contracts. For these reasons, and to avoid using unnecessary and duplicative terms throughout this part, the Department therefore will continue to use the term *contract* to refer to all contracts and any subcontracts thereunder, unless otherwise noted.

The Department proposed to substantially adopt the definition of *contracting officer* in section 2.101 of the FAR, which means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term would include certain authorized representatives of the contracting officer acting within the limits of their authority as delegated by the contracting officer. *See* 48 CFR 2.101. This definition was identical to the definition provided in 29 CFR 10.2, which implemented Executive Order 13658. The Department did not receive any comments on its proposed definition of this term; the final rule therefore adopts the definition as proposed.

The Department proposed to define *contractor* to mean any individual or other legal entity that is awarded a Federal Government contract or subcontract under a Federal Government contract. The Department noted that the term *contractor* referred to both a prime contractor and all of its subcontractors of any tier on a contract with the Federal Government. The proposed definition was consistent with the definition set forth in 29 CFR 10.2, which incorporates relevant aspects of the definitions of the term *contractor* in section 9.403 of the FAR, *see* 48 CFR 9.403, and the SCA's regulations at 29 CFR 4.1a(f). The proposed definition included lessors and lessees, as well as employers of workers performing on or in connection with covered Federal contracts whose wages are computed pursuant to special certificates issued under 29 U.S.C. 214(c). The Department noted that the term *employer* is used interchangeably with the terms *contractor* and *subcontractor* in part 23. The U.S. Government, its agencies, and its instrumentalities are not considered contractors, subcontractors, employers, or joint employers for purposes of compliance with the provisions of Executive Order 14026.

Importantly, the Department noted in the NPRM that the fact that an individual or entity is a *contractor* under the Department's definition does not mean that such an entity has legal obligations under the Executive order. A contractor only has obligations under the Executive order if it has a contract with the Federal Government that is specifically covered by the order. Thus, an entity that is awarded a contract with the Federal Government will qualify as a ''contractor'' pursuant to the Department's definition, however, that entity will only be subject to the minimum wage requirements of the Executive order if such contractor is awarded or otherwise enters into a ''new'' contract that falls within the scope of one of the four specifically enumerated categories of contracts covered by the order.

The Department received a few comments, such as from the AOA, asserting that the definition of *contractor* should not apply to particular individuals and entities, generally involving concessionaires and other licensees and permitees; such comments overlap with concerns expressed about the coverage of such legal instruments that are discussed below regarding contract coverage under § 23.30. As recognized by many commenters, Executive Order 14026 and this part apply to both procurement and non-procurement contracts, including contracts that are not subject to the FAR. In order to effectuate the stated intent and coverage provisions of the Executive order, the Department's definitions of both *contract* and *contractor* are thus broadly written to encompass a wide range of arrangements with the Federal Government entered into by a wide range of entities and individuals. As noted above, however, the mere fact that an individual or entity qualifies as a *contractor* under this definition does not necessarily render that individual or entity subject to Executive Order 14026; that entity must comply with the minimum wage requirements of the Executive order only if such contractor is awarded or otherwise enters into a ''new'' contract that falls within the scope of one of the four specifically enumerated categories of contracts covered by the order.

The Department also received comments from stakeholders, such as Colorado Ski Country USA and the National Ski Areas Association (NSAA), requesting clarification that the Department's determination that a particular individual or entity qualifies as a *contractor* under Executive Order 14026 and this part does not necessarily mean that such individual or entity is subject to other laws pertaining to federal contractors. The Department confirms that its determination that certain individuals or entities qualify as *contractors* for purposes of Executive Order 14026 and this part does not render such individuals or entities or their agreements ''federal contractors'' or ''contracts'' under other laws. The Department's proposed definitions and coverage principles discussed in this rule pertain to Executive Order 14026 and are not determinative of rights and responsibilities under other laws and regulations enforced by other federal agencies. (As recognized by NSAA, however, due to the nearly identical definitions of *contract* and *contractor* under Executive Order 14026 and Executive Order 13658, the determination in this rule that an entity qualifies as a contractor also means that such entity would be a contractor for purposes of Executive Order 13658.)

The Department did not receive any specific comments requesting changes to its proposed definition of the term *contractor;* the final rule therefore adopts the definition as proposed.

The Department proposed to define the term *Davis-Bacon Act* to mean the Davis-Bacon Act of 1931, as amended, 40 U.S.C. 3141 *et seq.,* and its implementing regulations. This proposed definition was taken from 29 CFR 10.2. The Department did not receive any comments on its proposed definition of this term and thus finalizes the definition as proposed.

Consistent with the regulations implementing Executive Order 13658, *see* 29 CFR 10.2, the Department proposed to define *executive departments and agencies* that are subject to Executive Order 14026 by adopting the definition of *executive agency* provided in section 2.101 of the FAR. 48 CFR 2.101. Specifically, the Department proposed to interpret the Executive order to apply to executive departments within the meaning of 5 U.S.C. 101, military departments within the meaning of 5 U.S.C. 102, independent establishments within the meaning of 5 U.S.C. 104(1), and wholly owned Government corporations within the meaning of 31 U.S.C. 9101. The Department noted that this proposed definition included independent agencies. Such agencies were expressly excluded from coverage of Executive Order 13658, which ''strongly encouraged'' but did not require compliance by independent agencies. *See* 79 FR 9853 (section 7(g) of Executive Order 13658); *see also* 79 FR 60643, 60646 (final rule interpreting Executive Order 13658 to exclude from coverage independent regulatory agencies within the meaning of 44 U.S.C. 3502(5)). Because Executive Order 14026 does not contain such exclusionary language, independent agencies are covered by the order and part 23. The inclusion of independent agencies was discussed in greater detail in the NPRM in the explanation of contracting agency coverage set forth at § 23.30. Finally, and consistent with the regulations implementing Executive Order 13658, the Department did not interpret the definition of *executive departments and agencies* as including the District of Columbia or any Territory or possession of the United States.

The Department received a few comments on this proposed definition, such as those submitted by the AFL–CIO and CWA and the SEIU, generally expressing support for this proposed definition and its inclusion of independent agencies but requesting that the Department expressly state that the U.S. Postal Service and other agencies and establishments within the meaning of 40 U.S.C. 102(4)(A) and (5) are covered by the definition of *executive departments and agencies.* The SEIU also expressed that the Department's final rule should include a list of independent establishments, government-owned corporations, and other entities covered by Executive Order 14026 to assist stakeholders in understanding their rights and responsibilities.

As a threshold matter, the Department notes that Executive Order 14026 expressly states that it applies to ''[e]xecutive departments and agencies, including independent establishments subject to the Federal Property and Administrative Services Act, 40 U.S.C. 102(4)(A), (5).'' 86 FR 22835. The plain text of Executive Order 14026 thus reflects that the Order applies to independent establishments but only to the extent that such establishments are subject to the Procurement Act. As explained in the comment submitted by the American Postal Workers Union, AFL–CIO, the U.S. Postal Service may qualify as an independent establishment, but it is not subject to the Procurement Act, 40 U.S.C. 121 *et seq.* The Department understands that the Postal Reorganization Act includes an exclusive list of laws Congress applies to the Postal Service and that list does not include the Procurement Act. *See* 39 U.S.C. 410(b). Thus, while commenters such as the American Postal Workers Union and the Teamsters request coverage of U.S. Postal Service contracts under Executive Order 14026, the Department does not have authority to expand coverage to such contracts because the U.S. Postal Service is not subject to the Procurement Act.

With respect to commenter requests for inclusion of a list of independent establishments, government-owned corporations, and other entities covered by Executive Order 14026, the Department greatly appreciates such feedback and agrees that transparency for the regulated community as to the scope of coverage is helpful in achieving compliance under the Executive order. After careful consideration, however, the Department declines to provide such a list in this final rule because various agencies and entities may be added or removed from the underlying statutory classifications of covered agencies (*i.e.,* executive departments, military departments, or any independent establishments within the meaning of 5

U.S.C. 101, 102, and 104(1), respectively, and any wholly owned Government corporation within the meaning of 31 U.S.C. 9101) by congressional or judicial determinations beyond the purview of the Department. Because these designations are not static, the Department believes it would be inadvisable to codify such lists in the regulations themselves. The Department will endeavor, however, to work with contracting agencies to ensure awareness of their potential obligations under Executive Order 14026 and to provide compliance assistance to the general public as needed. The Department therefore adopts its definition of *executive departments and agencies* as proposed, without modification.

The Department proposed to define *Executive Order 13658* to mean Executive Order 13658 of February 12, 2014, ''Establishing a Minimum Wage for Contractors,'' 79 FR 9851 (Feb. 20, 2014), and its implementing regulations at 29 CFR part 10. The Department did not receive any comments about this proposed definition and therefore adopts it as proposed.

The Department proposed to define the term *Executive Order 14026 minimum wage* as a wage that is at least: (i) $15.00 per hour beginning January 30, 2022; and (ii) beginning January 1, 2023, and annually thereafter, an amount determined by the Secretary pursuant to section 2 of Executive Order 14026. This definition was based on the language set forth in section 2 of the Executive order. 86 FR 22835. No comments were received on this proposed definition; accordingly, this definition is adopted in the final rule.

The Department proposed to define *Fair Labor Standards Act* as the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 201 *et seq.,* and its implementing regulations. This definition was adopted from 29 CFR 10.2. The Department did not receive any comments regarding this proposed definition and therefore adopts it as proposed, with one technical edit to change reference from the implementing regulations ''in this chapter'' to ''in this title.''

The Department proposed to define the term *Federal Government* as an agency or instrumentality of the United States that enters into a contract pursuant to authority derived from the Constitution or the laws of the United States. This proposed definition was based on the definition set forth in the regulations implementing Executive Order 13658. *See* 29 CFR 10.2. Consistent with that definition and the SCA, the proposed definition of the term *Federal Government* included nonappropriated fund instrumentalities under the jurisdiction of the Armed Forces or of other Federal agencies. *See* 29 CFR 4.107(a); 29 CFR 10.2. As explained above, and unlike the regulations implementing Executive Order 13658, this proposed definition also included independent agencies because such agencies are subject to the order's requirements. For purposes of Executive Order 14026 and part 23, the Department's proposed definition would not include the District of Columbia or any Territory or possession of the United States. The Department did not receive any comments on the proposed definition of *Federal Government* and thus adopts the definition as set forth in the NPRM.

The Department proposed to define the term *new contract* as a contract that is entered into on or after January 30, 2022, or a contract that is renewed or extended (pursuant to an exercised option or otherwise) on or after January 30, 2022. For purposes of Executive Order 14026, a contract that is entered into prior to January 30, 2022 will constitute a *new contract* if, on or after January 30, 2022: (1) The contract is renewed; (2) the contract is extended; or (3) an option on the contract is exercised. Under the proposed definition, a *new contract* includes contracts that result from solicitations issued prior to January 30, 2022, but that are entered into on or after January 30, 2022, unless otherwise excluded by § 23.40; contracts that result from solicitations issued on or after January 30, 2022; contracts that are awarded outside the solicitation process on or after January 30, 2022; and contracts that were entered into prior to January 30, 2022 (an ''existing contract'') but that are subsequently renewed or extended, pursuant to an exercised option period or otherwise, on or after January 30, 2022.

This definition was based on sections 8(a) and 9(a) of Executive Order 14026. *See* 86 FR 22837. The Department noted that the plain language of Executive Order 14026 compels a more expansive definition of the term *new contract* here than was promulgated under Executive Order 13658. For example, the renewal or extension of a contract pursuant to the exercise of an option period on or after January 30, 2022, will qualify as a *new contract* for purposes of Executive Order 14026 and part 23; exercised option periods, however, generally did not qualify as ''new contracts'' under Executive Order 13658. *See* 29 CFR 10.2. As in the NPRM, the Department separately discusses the coverage of ''new contracts,'' and the interaction of Executive Order 14026 and Executive Order 13658 with respect to contract coverage, in the preamble discussion accompanying § 23.30 (''Coverage'') below.

Numerous commenters, including the AFL–CIO and CWA, NELP, the SEIU, the Strategic Organizing Center, and the Teamsters, expressed their strong support for the proposed definition of *new contract,* particularly for its inclusion of exercised option periods. For example, the AFL–CIO and CWA stated that ''[b]roadening the definition of 'new contract' to include renewals, options, and extensions more closely aligns with the SCA and DBA'' and that ''DOL's inclusion of the exercise of options within the definition of 'new contract' provides a more congruent position that will not only allow agencies and contractors to predict the changes in contractual obligations due to the exercise of an option but will also ensure that a larger class of workers more quickly receive the benefit of the new minimum wage requirements.'' NELP similarly commended the proposed definition of *new contract,* stating that ''adhering to the announced implementation date of January 30, 2022, and attaching the wage increase to any renewals, extensions, or options on contracts signed before that date is critical to realizing the benefits of the executive order and to establishing consistency and equity in a system in which more than 500,000 contract actions were implemented in low-paying service industries just between the inauguration of President Biden and the date of the NPRM publication.'' Other commenters, such as Colorado Ski Country USA, Maximus, and River Riders, Inc., expressed concern or confusion regarding the application of Executive Order 14026 to contracts that were entered into prior to January 30, 2022 but that are subsequently renewed or extended, pursuant to an exercised option period or otherwise, on or after January 30, 2022.

A few commenters, such as the AFL–CIO and CWA and the Teamsters, requested that the Department expand the definition of *new contract* to include covered task orders placed on or after January 30, 2022, under existing multiple-award contracts. Other commenters, such as River Riders, Inc., requested clarification as to how the definition of *new contract* applies to particular factual situations, such as whether an extension to an existing permit, where the permit is presently exempt under Executive Order 13838, qualifies as a *new contract.*

Because the Department's proposed definition of *new contract* accurately

and appropriately implements the coverage principles explicitly required by sections 8(a) and 9(a) of Executive Order 14026, *see* 86 FR 22837, the Department adopts the definition of *new contract* as proposed. The Department addresses commenters' specific questions regarding application of the definition to various factual situations, and provides additional clarification and examples of new contracts, in its preamble discussion of the coverage provisions set forth at § 23.30 in this final rule below.

Proposed § 23.20 defined the term *option* by adopting the definition set forth in 29 CFR 10.2 and in section 2.101 of the FAR, which provides that the term *option* means a unilateral right in a contract by which, for a specified time, the Federal Government may elect to purchase additional supplies or services called for by the contract, or may elect to extend the term of the contract. *See* 48 CFR 2.101. When used in this context, the Department noted in the NPRM that the additional ''services'' called for by the contract would include construction services. As discussed above, an option on an existing covered contract that is exercised on or after January 30, 2022, qualifies as a ''new contract'' subject to the Executive order and part 23. The Department did not receive comments regarding this proposed definition and thus adopts the definition as set forth in the NPRM.

The Department proposed to define the term *procurement contract for construction* to mean a procurement contract for the construction, alteration, or repair (including painting and decorating) of public buildings or public works and which requires or involves the employment of mechanics or laborers, and any subcontract of any tier thereunder. The proposed definition included any contract subject to the provisions of the DBA, as amended, and its implementing regulations. This proposed definition was identical to that set forth in 29 CFR 10.2, which in turn was derived from language found at 40 U.S.C. 3142(a) and 29 CFR 5.2(h).

The Center for Workplace Compliance expressed support for this proposed definition of a ''key term'' because it is consistent with the definition set forth in the regulations implementing Executive Order 13658, *see* 29 CFR 10.2. The Center for Workplace Compliance noted that it supports such consistency because ''compliance with the new E.O. will be simplified to the extent that the compliance obligations are similar to those under E.O. 13658.'' The Department received no other specific comments about the proposed definition of *procurement contract for construction* and therefore adopts the definition as proposed in the NPRM.

The Department proposed to define the term *procurement contract for services* to mean a contract the principal purpose of which is to furnish services in the United States through the use of service employees, and any subcontract of any tier thereunder. This proposed definition included any contract subject to the provisions of the SCA, as amended, and its implementing regulations. This proposed definition was identical to that set forth in 29 CFR 10.2, which in turn was derived from language set forth in 41 U.S.C. 6702(a) and 29 CFR 4.1a(e). As with the definition of *procurement contract for construction* above, the Center for Workplace Compliance commended this definition for its consistency with 29 CFR 10.2. The Department received no other specific comments about the proposed definition and thus adopts it without modification.

The Department proposed to define the term *Service Contract Act* to mean the McNamara-O'Hara Service Contract Act of 1965, as amended, 41 U.S.C. 6701 *et seq.,* and its implementing regulations. *See* 29 CFR 4.1a(a). The Department did not receive comments about this proposed definition and thus finalizes it as set forth in the NPRM.

The Department proposed to define the term *solicitation* to mean any request to submit offers, bids, or quotations to the Federal Government. This definition was based on the definition set forth at 29 CFR 10.2. The Department broadly interpreted the term *solicitation* to apply to both traditional and nontraditional methods of solicitation, including informal requests by the Federal Government to submit offers or quotations. However, the Department noted that requests for information issued by Federal agencies and informal conversations with Federal workers would not be ''solicitations'' for purposes of the Executive order. No comments were received on this proposed definition and it is therefore adopted as proposed.

The Department proposed to adopt the definition of *tipped employee* in section 3(t) of the FLSA, that is, any employee engaged in an occupation in which the employee customarily and regularly receives more than $30 a month in tips. *See* 29 U.S.C. 203(t). For purposes of the Executive order, a worker performing on or in connection with a contract covered by the Executive order who meets this definition is a tipped employee. The Department did not receive comments regarding this proposed definition; it is therefore adopted as set forth in the NPRM.

The Department proposed to define the term *United States* as the United States and all executive departments, independent establishments, administrative agencies, and instrumentalities of the United States, including corporations of which all or substantially all of the stock is owned by the United States, by the foregoing departments, establishments, agencies, instrumentalities, and including nonappropriated fund instrumentalities. This portion of the proposed definition is identical to the definition of *United States* in 29 CFR 10.2. When the term is used in a geographic sense, the Department proposed that the *United States* means the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf lands as defined in the Outer Continental Shelf Lands Act, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, Wake Island, and Johnston Island.

The geographic scope component of this proposed definition was derived from the definition of *United States* set forth in the regulations implementing the SCA. *See* 29 CFR 4.112(a). Although the Department only included the 50 States and the District of Columbia within the geographic scope of the regulations implementing Executive Order 13658, *see* 29 CFR 10.2, the Department noted in the NPRM that Executive Order 14026 directs the Department to establish ''definitions of relevant terms'' in its regulations. 86 FR 22835. As previously discussed, Executive Order 14026 also directs the Department to ''incorporate existing definitions'' under the FLSA, SCA, DBA, and Executive Order 13658 ''to the extent practicable.'' 86 FR 22836. Each of the territories listed above is covered by both the SCA, *see* 29 CFR 4.112(a), and the FLSA, *see, e.g.,* 29 U.S.C. 213(f); 29 CFR 776.7; Fair Minimum Wage Act of 2007, Public Law 110–28, 121 Stat. 112 (2007), but not the DBA, 40 U.S.C. 3142(a).

Accordingly, it was not practicable to adopt all the cross-referenced existing definitions, and the Department had to choose between them to incorporate existing definitions ''to the extent practicable.'' The Department proposed to exercise its discretion to select a definition that tracks the SCA and FLSA, for the following reasons. As explained in the NPRM and reflected in the preliminary regulatory impact analysis, the Department further examined the issue since its prior rulemaking in 2014 and consequently determined that the Federal Government's procurement interests in economy and efficiency would be

promoted by expanding the geographic scope of Executive Order 14026. To be clear, the Department was not proposing to extend coverage of this Executive order to contracts entered into with the governments of the specified territories, but rather proposed to expand coverage to covered contracts with the Federal Government that are being performed inside the geographical limits of those territories. Because contractors operating in those territories will generally have familiarity with many of the requirements set forth in part 23 based on their coverage by the SCA and/or the FLSA, the Department did not believe that the proposed extension of Executive Order 14026 and part 23 to such contractors would impose a significant burden.

The Department received a number of comments on this proposed definition and interpretation that workers performing on or in connection with covered contracts in the specified U.S. territories are covered by Executive Order 14026. The vast majority of the comments received on this proposed definition expressed strong support for the proposed interpretation that Executive Order 14026 apply to covered contracts being performed in Puerto Rico, the Virgin Islands, Outer Continental Shelf lands as defined in the Outer Continental Shelf Lands Act, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, Wake Island, and Johnston Island. A wide variety of stakeholders expressed their agreement with this proposed coverage interpretation, including numerous elected officials, such as the Governor of Guam and several legislators from Puerto Rico and Guam; labor organizations, such as the Labor Council for Latin American Advancement, AFL–CIO, the American Federation of State, County, and Municipal Employees (AFSCME), the Union de Profesionales de la Seguridad Privada de Puerto Rico, and the Teamsters; and other interested organizations, including the Economic Policy Institute (EPI), One Fair Wage, Oxfam, ROC United, and the Leadership Conference on Civil and Human Rights. Several of these commenters voiced their concurrence that expansion of coverage to the enumerated U.S. territories will promote economy and efficiency in Federal Government procurement. For example, the Governor of Guam, the Hon. Lourdes A. Leon Guerrero, affirmed ''that extending the E.O. 14026 minimum wage to workers performing contracts in Guam would promote the federal government's procurement interests in economy and efficiency'' and ''E.O. 14026's application to Guam will improve the morale and quality of life of 11,800 employees in Guam, Puerto Rico, and the U.S. Virgin Islands, who are laborers, nursing assistants, and foodservice and maintenance workers.'' Several legislators in Puerto Rico expressed similar support for the expansion of coverage to workers in Puerto Rico. NELP also commended the Department's proposed definition of *United States* as including the specified U.S. territories, commenting that ''[j]ust as higher wages will result in lower turnover and higher productivity in the 50 US States, so too will economy and efficiency improve for contracts performed in these areas with the $15 minimum wage.''

A few commenters, such as Conduent and the Center for Workplace Compliance, expressed concern with the Department's proposed interpretation that Executive Order 14026 applies to workers performing on or in connection with covered contracts in the enumerated U.S. territories. Such commenters generally asserted that the proposed coverage of the territories is not compelled by the text of Executive Order 14026 itself and could cause financial disruptions, including by adversely affecting private industry, in the territories unless the Executive order minimum wage rate is phased in over a number of years. Due to its concern that the NPRM's ''expanded geographic scope may have unintended consequences given the fact that E.O. 13658 did not apply in these jurisdictions and the increase in minimum wage may be significant,'' the Center for Workplace Compliance encouraged the Department ''to carefully monitor implementation of the E.O. as it applies to jurisdictions outside of the fifty states and the District of Columbia and take a flexible approach with covered contractors through the exercise of enforcement discretion should significant unintended consequences occur.''

The Department appreciates and has carefully considered all of the comments submitted regarding the proposed definition of *United States* and geographic scope of the rule. After thorough review, the Department adopts the definition and interpretation as proposed. Although it is true that the text of Executive Order 14026 does not compel the determination that the order applies to covered contracts in the specified U.S. territories, the Department exercised its delegated discretion to select a definition of *United States* that aligns with the FLSA and SCA, as explained in the NPRM. As outlined in the NPRM and reflected in the final regulatory impact analysis in this final rule, the Department has further analyzed this issue since its Executive Order 13658 rulemaking in 2014 and consequently determined that the Federal Government's procurement interests in economy and efficiency would be promoted by extending the Executive Order 14026 minimum wage to workers performing on or in connection with covered contracts in the enumerated U.S. territories. The vast majority of public comments received on this issue concur with this determination, including perhaps most notably a wide variety of stakeholders located in the U.S. territories themselves. With respect to the comments voicing concern with potential unintended consequences of such coverage in the U.S. territories, the Department appreciates such feedback and certainly intends to monitor the effects of this rule. However, such comments did not provide compelling qualitative or quantitive evidence for the assertions that application of the order to the U.S. territories will result in economic or other disruptions. The Department further views requests for a gradual phase-in of the Executive Order 14026 minimum wage rate as beyond the purview of the Department in this rulemaking.[9] The Department therefore adopts the proposed definition of *United States,* and the related interpretation that Executive Order 14026 applies to covered contracts performed in the specified U.S. territories, as set forth in the NPRM.

The Department proposed to define *wage determination* as including any determination of minimum hourly wage rates or fringe benefits made by the Secretary pursuant to the provisions of the SCA or the DBA. This term included the original determination and any subsequent determinations modifying, superseding, correcting, or otherwise changing the provisions of the original determination. The proposed definition was adopted from 29 CFR 10.2, which itself was derived from 29 CFR 4.1a(h) and 29 CFR 5.2(q). The Department did not receive comments on this proposed

[9] Section 3 of Executive Order 14026 explicitly establishes a gradual phase-in of the full Executive Order minimum cash wage rate for tipped employees. With that lone exception, the order clearly requires that, as of January 30, 2022, workers performing on or in connection with covered contracts must be paid $15 per hour unless exempt. There is no indication in the Executive order that the Department has authority to modify the amount or timing of the minimum wage requirement, except where the Department is expressly required to implement the future annual inflation-based adjustments to the wage rate pursuant to the methodology set forth in the order.

definition and therefore adopts it without modification.

The Department proposed to define *worker* as any person engaged in performing work on or in connection with a contract covered by the Executive order, and whose wages under such contract are governed by the FLSA, the SCA, or the DBA, regardless of the contractual relationship alleged to exist between the individual and the employer. The proposed definition also incorporated the Executive order's provision that the term *worker* includes any individual performing on or in connection with a covered contract whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(c). *See* 86 FR 22835. The proposed definition also would include any person working on or in connection with a covered contract and individually registered in a bona fide apprenticeship or training program registered with the Department's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship. *See* 29 CFR 4.6(p) (SCA); 29 CFR 5.2(n) (DBA). The Department included in the proposed definition of *worker* a brief description of the meaning of working ''on or in connection with'' a covered contract. Specifically, the definition provided that a worker performs ''on'' a contract if the worker directly performs the specific services called for by the contract and that a worker performs ''in connection with'' a contract if the worker's work activities are necessary to the performance of a contract but are not the specific services called for by the contract. As in the NPRM, these concepts are discussed in greater detail below in the explanation of worker coverage set forth at § 23.30.

Consistent with the FLSA, SCA, and DBA and their implementing regulations, the proposed definition of *worker* excluded from coverage any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in 29 CFR part 541. *See* 29 U.S.C. 213(a)(1) (FLSA); 41 U.S.C. 6701(3)(C) (SCA); 29 CFR 5.2(m) (DBA). The Department's proposed definition of *worker* was substantively identical to the definition that appears in the regulations implementing Executive Order 13658, *see* 29 CFR 10.2, but contained additional clarifying language regarding the ''on or in connection with'' standard in the proposed regulatory text itself.

Consistent with the Department's rulemaking under Executive Order 13658, as well as with the FLSA, DBA, and SCA, the Department emphasized the well-established principle that worker coverage does not depend upon the existence or form of any contractual relationship that may be alleged to exist between the contractor or subcontractor and such persons. *See, e.g.,* 29 U.S.C. 203(d), (e)(1), (g) (FLSA); 41 U.S.C. 6701(3)(B), 29 CFR 4.155 (SCA); 29 CFR 5.5(a)(1)(i) (DBA). The Department noted that, as reflected in the proposed definition, the Executive order is intended to apply to a wide range of employment relationships. Neither an individual's subjective belief about his or her employment status nor the existence of a contractual relationship is determinative of whether a worker is covered by the Executive order.

Several commenters expressed support for the Department's proposed definition of *worker.* NELP, for example, noted that this ''broad definition recognizes that many work activities—not just those specifically mentioned in the contract—are integral to the performance of that contract, and that all individuals performing these work activities should be covered by the E.O..'' NELP further commended the definition because it ''makes clear that the federal government takes misidentifying employment status seriously and will look beyond an employer's labeling of workers as 'independent contractors' and make its own determination of whether such workers are covered.'' The AFL–CIO and CWA similarly agreed with the proposed definition of *worker,* commending it as a ''broad and comprehensive'' definition that comports with the DBA, FLSA, and SCA, and that is ''necessary to ensure that contractors and subcontractors that conduct business with the federal government do not evade the Executive Order's requirements and thereby undercut the wage floor it is intended to establish.''

Other commenters expressed concern with the proposed definition and interpretation of the term *worker,* particularly with respect to the Department's proposed general coverage of workers performing in connection with covered contracts. For example, the Chamber acknowledged that the proposed definition mirrors the definition of *worker* in 29 CFR 10.2 but noted that the ''only activities associated with the federal contract are subject to the new minimum wage. In most businesses, employees are not allocated exclusively to such a narrow range of duties and customers, meaning that employers will have to isolate the time spent on work associated with the federal contract from time spent doing other duties. This will be a tremendous administrative burden.'' ABC and Maximus, among others, similarly expressed concern regarding the proposed definition and interpretation that workers performing in connection with a covered contract are generally entitled to the Executive Order 14026 minimum wage, noting that such an interpretation may cause confusion and increase administrative burden. Several other commenters requested clarification as to whether workers in particular factual scenarios, including apprentices, would qualify as covered workers under the proposed definition.

The Department has carefully considered all relevant comments received regarding its proposed definition of *worker* and has determined to adopt the definition as set forth in the NPRM. With respect to the concerns expressed regarding the breadth of the proposed definition and its applicability to workers performing work ''in connection with'' covered contracts, the Department notes that Executive Order 14026 itself explicitly states its applicability to ''workers working on or in connection with'' a covered contract. 86 FR 22835. As recognized by commenters both in support of and opposition to the proposed definition, this definition also mirrors the definition set forth in the Department's regulations implementing Executive Order 13658, *see* 29 CFR 10.2. The Department believes that consistency between the two sets of regulations, where appropriate, will aid stakeholders in understanding their rights and obligations under Executive Order 14026, will enhance compliance assistance, and will minimize the potential for administrative burden on the part of contracting agencies and contractors. The potential for administrative burden resulting from the broad coverage of workers under the Executive order is further mitigated by the exclusion for FLSA-covered workers performing in connection with covered contracts for less than 20 percent of their work hours in a given workweek set forth at proposed 23.40(f), which is discussed in greater detail in the accompanying preamble discussion for that exclusion.

The Department therefore adopts the proposed definition of the term *worker* as set forth in the NPRM. However, the Department has endeavored to provide additional clarification regarding worker coverage under Executive Order 14026, particularly with respect to the ''in connection with'' standard, as well as examples of the types of individuals that would qualify as covered workers,

in the preamble section regarding worker coverage provisions at § 23.30 below.

Finally, the Department proposed to adopt the definitions of the terms *Administrative Review Board, Administrator, Office of Administrative Law Judges,* and *Wage and Hour Division* set forth in 29 CFR 10.2. The Department did not receive comments on these proposed definitions; accordingly, they are adopted as proposed.

Section 23.30 Coverage

Proposed § 23.30 addressed and implemented the coverage provisions of Executive Order 14026. Proposed § 23.30 explained the scope of the Executive order and its coverage of executive agencies, new contracts, types of contractual arrangements, and workers. Proposed § 23.40 implemented the exclusions expressly set forth in section 8(c) of the Executive order and provided other limited exclusions to coverage as authorized by section 4(a) of the order. 86 FR 22836–37.

Several commenters, such as AGC, the AOA, and the Center for Workplace Compliance, requested that the Department provide additional clarification and examples regarding coverage of contracts, contractors, workers, and work throughout its preamble discussion of this provision. In response to these comments, and as set forth below, the Department has endeavored to further clarify the scope of coverage of Executive Order 14026 in the preamble discussion of § 23.30 below.

Some commenters also requested that the Department determine whether Executive Order 14026 applies to a wide range of particular factual arrangements and circumstances. To the extent that such commenters provided sufficient specific factual information for the Department to determine a particular coverage issue and such a discussion of the specific coverage issue would be useful to the general public, the Department has addressed the specific factual questions raised in the preamble discussion below. Where the Department is unable to explicitly address a particular factual question due to a lack of information provided by the commenter, or where stakeholders continue to have questions even after reviewing the general coverage principles addressed in this final rule, the Department encourages commenters and other stakeholders with specific coverage questions to contact the Wage and Hour Division for compliance assistance in determining their rights and responsibilities under Executive Order 14026.

Executive Order 14026 provides that agencies must, to the extent permitted by law, ensure that contracts, as defined in part 23 and as described in section 8(a) of the order, include a clause specifying, as a condition of payment, that the minimum wage paid to workers employed on or in connection with the contract shall be at least: (i) $15.00 per hour beginning January 30, 2022; and (ii) beginning January 1, 2023, and annually thereafter, an amount determined by the Secretary. 86 FR 22835. (*See* § 23.50 for a discussion of the methodology established by the Executive order to determine the future annual minimum wage increases.) Section 8(a) of the Executive order establishes that the order's minimum wage requirement only applies to a new contract, new solicitation, extension or renewal of an existing contract, and exercise of an option on an existing contract (which are collectively referred to in this rule as ''new contracts''), if: (i)(A) It is a procurement contract for services or construction; (B) it is a contract for services covered by the SCA; (C) it is a contract for concessions, including any concessions contract excluded by the Department's regulations at 29 CFR 4.133(b); or (D) it is a contract entered into with the Federal Government in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public; and (ii) the wages of workers under such contract are governed by the FLSA, the SCA, or the DBA. 86 FR 22837. Section 8(b) of the order states that, for contracts covered by the SCA or the DBA, the order applies only to contracts at the thresholds specified in those statutes. *Id.* It also specifies that, for procurement contracts where workers' wages are governed by the FLSA, the order applies only to contracts that exceed the micro-purchase threshold, as defined in 41 U.S.C. 1902(a), unless expressly made subject to the order pursuant to regulations or actions taken under section 4 of the order. *Id.* The Executive order states that it does not apply to grants; contracts or agreements with Indian Tribes under the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638), as amended; or any contracts expressly excluded by the regulations issued pursuant to section 4(a) of the order. *Id.*

Proposed § 23.30(a) implemented these coverage provisions by stating that Executive Order 14026 and part 23 apply to, unless excluded by § 23.40, any new contract as defined in § 23.20, provided that: (1)(i) It is a procurement contract for construction covered by the DBA; (ii) it is a contract for services covered by the SCA; (iii) it is a contract for concessions, including any concessions contract excluded by Departmental regulations at 29 CFR 4.133(b); or (iv) it is a contract in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public; and (2) the wages of workers under such contract are governed by the FLSA, the SCA, or the DBA. 86 FR 22837. Proposed § 23.30(b) incorporated the monetary value thresholds referred to in section 8(b) of the Executive order. *Id.* Finally, proposed § 23.30(c) stated that the Executive order and part 23 only apply to contracts with the Federal Government requiring performance in whole or in part within the United States. As in the NPRM, several issues relating to the coverage provisions of the Executive order and § 23.30 are discussed below.

Coverage of Executive Agencies and Departments

Executive Order 14026 applies to all ''[e]xecutive departments and agencies, including independent establishments subject to the Federal Property and Administrative Services Act, 40 U.S.C. 102(4)(A), (5).'' 86 FR 22835. As explained above, the Department proposed to define *executive departments and agencies* by adopting the definition of *executive agency* provided in 29 CFR 10.2 and section 2.101 of the FAR. 48 CFR 2.101. The proposed rule therefore interpreted the Executive order as applying to executive departments within the meaning of 5 U.S.C. 101, military departments within the meaning of 5 U.S.C. 102, independent establishments within the meaning of 5 U.S.C. 104(1), and wholly owned Government corporations within the meaning of 31 U.S.C. 9101. As discussed above, this proposed definition included independent agencies. Accordingly, independent agencies would be covered contracting agencies for purposes of Executive Order 14026 and part 23.

Additionally, Section 7(g) of Executive Order 13658 ''strongly encouraged'' but did not require independent agencies to comply with its requirements. 79 FR 9853. Therefore, in the final rule implementing Executive Order 13658, the Department interpreted such language to exclude independent regulatory agencies as defined in 44 U.S.C. 3502(5) from coverage of Executive Order 13658. *See, e.g.,* 79 FR 60643, 60646. Unlike Executive Order 13658, Executive Order

14026 does not set forth any exclusion for independent agencies. Executive Order 14026 and part 23 thus apply to a broader universe of contracting agencies than were covered by Executive Order 13658 and its implementing regulations at 29 CFR part 10.

Finally, pursuant to the proposed definition, contracts awarded by the District of Columbia or any Territory or possession of the United States would not be covered by the order.

As previously discussed in the context of the proposed definition of *executive departments and agencies,* the Department received several comments supporting its proposed coverage of contracting agencies, particularly with respect to its interpretation that independent agencies are included within the scope of coverage. A few commenters, such as the SEIU and the Teamsters, generally expressed support for this proposed interpretation but requested that the Department expressly state that the U.S. Postal Service and other agencies and establishments within the meaning of 40 U.S.C. 102(4)(A) and (5) are covered by the definition of *executive departments and agencies.* The SEIU also asked the Deparment to include a list of independent establishments, government-owned corporations, and other entities covered by Executive Order 14026.

As explained above, the plain text of Executive Order 14026 reflects that the order applies to independent establishments but only to the extent that such establishments are subject to the Procurement Act, 40 U.S.C. 121 *et seq.* The Postal Reorganization Act sets forth an exclusive list of laws Congress applies to the Postal Service, and that list does not include the Procurement Act. *See* 39 U.S.C. 410(b). The Department does not have authority to confer coverage upon U.S. Postal Service contracts because the U.S. Postal Service is not an independent establishment subject to the Procurement Act.

As explained above in the discussion of the proposed definition of *executive departments and agencies,* the Department declines to provide a list of covered contracting agencies in this final rule because these classifications are not static and the Department believes it would be inadvisable to codify such lists in the regulations themselves. The Department will endeavor, however, to work with contracting agencies to ensure awareness of their potential obligations under Executive Order 14026 and to provide compliance assistance to the general public.

The Department therefore affirms its discussion of the proposed coverage of executive agencies and departments in the final rule.

Coverage of New Contracts With the Federal Government

The Department proposed in § 23.30(a) that the requirements of the Executive order generally apply to ''contracts with the Federal Government.'' As discussed above, and consistent with the Department's regulations implementing Executive Order 13658, the Department proposed to set forth a broadly inclusive definition of the term *contract* that would include all contracts and any subcontracts of any tier thereunder, whether negotiated or advertised, including any procurement actions, lease agreements, cooperative agreements, provider agreements, intergovernmental service agreements, service agreements, licenses, permits, or any other type of agreement, regardless of nomenclature, type, or particular form, and whether entered into verbally or in writing. The Department intended that the term *contract* be interpreted broadly as to include, but not be limited to, any contract within the definition provided in the FAR or applicable Federal statutes. This definition would include, but not be limited to, any contract that may be covered under any Federal procurement statute. Contracts may be the result of competitive bidding or awarded to a single source under applicable authority to do so. In addition to bilateral instruments, contracts would include, but would not be limited to, awards and notices of awards; job orders or task letters issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; exercised contract options; and bilateral contract modifications. Unless otherwise noted, the use of the term *contract* throughout the Executive order and part 23 included *contract-like instruments* and subcontracts of any tier.

As reflected in proposed § 23.30(a), the minimum wage requirements of Executive Order 14026 would apply only to ''new contracts'' with the Federal Government within the meaning of sections 8(a) and 9(a) of the order and as defined in part 23. 86 FR 22837. Section 9 of the Executive order states that the order shall apply to covered new contracts, new solicitations, extensions or renewals of existing contracts, and exercises of options on existing contracts, as described in section 8(a) of the order, where the relevant contract is entered into, or extended or renewed, or the relevant option will be exercised, on or after: (i) January 30, 2022, consistent with the effective date for the action taken by the FARC pursuant to section 4(a) of the order; or (ii) for contracts where an agency action is taken pursuant to section 4(b) of the order, on or after January 30, 2022, consistent with the effective date for such action. *Id.* Proposed § 23.30(a) of this rule therefore stated that, unless excluded by § 23.40, part 23 would apply to any new contract with the Federal Government as defined in § 23.20. As explained in the proposed definition of *new contract* above, a *new contract* meant a contract that is entered into on or after January 30, 2022, or a contract that is renewed or extended (pursuant to an exercised option or otherwise) on or after January 30, 2022. For purposes of the Executive order, a contract that is entered into prior to January 30, 2022 will constitute a *new contract* if, on or after January 30, 2022: (1) The contract is renewed; (2) the contract is extended; or (3) an option on the contract is exercised. To be clear, for contracts that were entered into prior to January 30, 2022, the Executive Order 14026 minimum wage requirement applies prospectively as of the date that such contract is renewed or extended (pursuant to an exercised option or otherwise) on or after January 30, 2022; the Executive order does not apply retroactively to the date that the contract was originally entered into.

The Department noted that the plain language of Executive Order 14026 compels a more expansive definition of the term *new contract* here than under Executive Order 13658. For example, Executive Order 13658 coverage was not triggered by the unilateral exercise of a pre-negotiated option to renew an existing contract by the Federal Government, *see* 29 CFR 10.2. However, section 8(a) of this order makes clear that Executive Order 14026 applies to the ''exercise of an option on an existing contract'' where such exercise occurs on or after January 30, 2022. 86 FR 22837. In the NPRM, the Department noted that, under the SCA and DBA, the Department and the FARC generally require the inclusion of a new or current prevailing wage determination upon the exercise of an option clause that extends the term of an existing contract. *See, e.g.,* 29 CFR 4.143(b); 48 CFR 22.404–1(a)(1); All Agency Memorandum (AAM) No. 157 (1992); *In the Matter of the United States Army,* ARB Case No. 96–133, 1997 WL 399373 (ARB July 17,

1997).[10] The SCA's regulations, for example, provide that when the term of an existing contract is extended pursuant to an option clause, the contract extension is viewed as a ''new contract'' for SCA purposes. *See* 29 CFR 4.143(b). In the NPRM, the Department observed that the application of Executive Order 14026's minimum wage requirements to contracts for which an option period is exercised on or after January 30, 2022 should be easily understood by contracting agencies and contractors.

Under the proposed rule, a contract awarded under the GSA Schedules would be considered a ''new contract'' in certain situations. Of particular note, any covered contracts that are added to the GSA Schedule on or after January 30, 2022 would generally qualify as ''new contracts'' subject to the order, unless excluded by § 23.40; any covered task orders issued pursuant to those contracts would also be deemed to be ''new contracts.'' This would include contracts to add new covered services as well as contracts to replace expiring contracts. Consistent with section 9(c) of the Executive order, agencies are strongly encouraged to bilaterally modify existing contracts, as appropriate, to include the minimum wage requirements of this rule even when such contracts are not otherwise considered to be a ''new contract'' under the terms of this rule. 86 FR 22838. For example, pursuant to the order, contracting officers are encouraged to modify existing indefinite-delivery, indefinite-quantity contracts in accordance with FAR section 1.108(d)(3) to include the Executive Order 14026 minimum wage requirements.

The Department received a number of comments regarding the proposed coverage of new contracts under Executive Order 14026. Many commenters, including the AFL–CIO and CWA, NELP, the SEIU, the Strategic Organizing Center, and the Teamsters, expressed their strong support for the Executive order's coverage of new contracts, particularly for its inclusion of contracts that are entered into prior to January 30, 2022, if, on or after January 30, 2022, the contract is renewed, the contract is extended, or an option on the contract is exercised. For example, NELP commended the proposed interpretation of new contract coverage, stating that ''adhering to the announced implementation date of January 30, 2022, and attaching the wage increase to any renewals, extensions, or options on contracts signed before that date is critical to realizing the benefits of the executive order and to establishing consistency and equity in a system in which more than 500,000 contract actions were implemented in low-paying service industries just between the inauguration of President Biden and the date of the NPRM publication.'' The Center for Workplace Compliance noted that the Department's proposed definition and interpretation of *new contract* here departs from the interpretation set forth in the regulations implementing Executive Order 13658, particularly with respect to the proposed coverage of exercised option periods, but affirmed that such departure is ''compelled'' by and ''consistent with'' the text of Executive Order 14026.

Several commenters requested that the Department clarify whether covered task orders placed on or after January 30, 2022, under multiple-award contracts (MACs), such as GSA Schedules, Government Wide Acquisition Contracts, and other indefinite-delivery, indefinite-quantity contracts, that were entered into prior to January 30, 2022, qualify as ''new contracts'' covered by Executive Order 14026. Commenters, such as the SEIU and the Teamsters, requested the Department to expand the coverage of ''new contracts'' to include such task orders. AGC requested that, if the Department does clarify or expand coverage to include such task orders placed under existing IDIQ contracts, the Department should include an adjustments clause related to any increase of the Executive order minimum wage rate.

The Department greatly appreciates and has carefully considered the comments requesting the expansion of ''new contract'' coverage, but for the reasons explained below, has determined to reaffirm the approach to ''new contract'' coverage set forth in the NPRM. The Department clarifies in this final rule that task orders placed or issued under existing MACs (*i.e.,* MACs entered into prior to January 30, 2022) will only be covered by Executive Order 14026 if and when the MAC itself becomes subject to Executive Order 14026. This interpretation is consistent with the approach to coverage of task orders adopted under the regulations implementing Executive Order 13658. The Department's treatment of task orders also is consistent with its treatment of subcontracts, under both the regulations implementing Executive Order 13658 and this part, in that such agreements only are covered by the Executive order if the master or prime contract under which they are issued is also covered by the Executive order.

Although it is true that the scope of ''new contract'' coverage under Executive Order 14026 is more expansive than under Executive Order 13658, the broadening of contract coverage in the Executive order did not involve the coverage of task orders; rather, and as reflected in sections 8 and 9 of the order, the expansion of coverage was primarily focused on the exercise of option periods on or after January 30, 2022. The Department has thus determined that it would best effectuate the intent of the Executive order, and promote effective implementation and administration of the Executive order and this final rule, to maintain consistency with the coverage of task orders set forth in the regulations implementing Executive Order 13658 (including the interim final rule issued by the FARC) as well as with the coverage of subcontracts explained in those regulations as well as in this part.

At the same time, consistent with section 9(c) of Executive Order 14026, the Department strongly encourages agencies to bilaterally modify existing MACs, as appropriate, to include the minimum wage requirements of this rule even when such contracts are not otherwise considered to be a ''new contract'' under the terms of this rule. *See* 86 FR 22838. For example, pursuant to section 9(c) of the order, contracting officers are encouraged to modify existing IDIQ contracts in accordance with FAR section 1.108(d)(3) to include the Executive Order 14026 minimum wage requirements. The Department notes that, when the FARC issued its interim rule amending the FAR to implement Executive Order 13658 in December 2014, the FARC also expressly stated, ''In accordance with FAR 1.108(d)(3), contracting officers are strongly encouraged to include the clause in existing indefinite-delivery indefinite-quantity contracts, if the remaining ordering period extends at least six months and the amount of remaining work or number of orders expected is substantial.'' 79 FR 74545. The Department expects, and strongly encourages, the FARC to include this provision, or a substantially similar one, in its rule implementing Executive Order 14026.

Although the Department appreciates the comments encouraging an

[10] As stated in AAM 157, the Department does not assert that the exercise of an option period qualifies as a new contract in all cases for purposes of the DBA and SCA. *See* 63 FR 64542 (Nov. 20, 1998). The Department considers the specific contract requirements at issue in making this determination. For example, under those statutes, the Department does not consider that a new contract has been created where a contractor is simply given additional time to complete its original obligations under the contract. *Id.*

expansion of coverage to include all task orders placed on or after January 30, 2022 regardless of whether the master contract itself qualifies as a new contract, the Department declines to adopt such an approach. The Department's determination that task orders placed under existing MACs only qualify as covered new contracts when the MAC itself becomes subject to the Executive order is consistent with the approach adopted by the Department in its regulations implementing Executive Order 13658. *See* 79 FR 60649. As noted above, however, the Department anticipates that many such existing MACs will be covered by Executive Order 14026 based on the voluntary, but strongly encouraged, action taken by contracting agencies to insert the Executive Order 14026 contract clause as discussed above.

Relatedly, the Department declines AGC's request to direct that a contract price adjustment be given to contractors reflecting any higher short-term labor costs that could arise by applying Executive Order 14026 to new task orders on or after January 30, 2022, that are issued under master contracts that were entered into prior to January 30, 2022. As a general matter, price adjustments, if appropriate, would need to be based on the specific nature of the contract. Moreover, as outlined above, the Department is encouraging, but not requiring, contracting agencies to modify existing MACs that do not otherwise qualify as a ''new contract'' to include the relevant contract clause; until such time as the existing MAC becomes subject to Executive Order 14026, any task orders placed under such master contract are not required to comply with the order.

With respect to other comments regarding ''new contract'' coverage, the Professional Services Council (PSC) urged the Department to reconsider the following sentence set forth in the NPRM: ''Consistent with section 9(c) of the Executive order, agencies are strongly encouraged to bilaterally modify existing contracts, as appropriate, to include the minimum wage requirements of this rule even when such contracts are not otherwise considered to be a 'new contract' under the terms of this rule.'' In its comment, PSC requested that the Department delete the above-quoted language regarding bilateral modifications and instead insert language regarding how and when an agency would modify an existing contract to ensure contractors have clarity regarding timelines and requirements for compliance. The Department declines PSC's request because the sentence at issue is focused on generally encouraging contracting agencies to voluntarily take appropriate and permissible action to apply the Executive order minimum wage requirement even where not required to do so by the order or this part. The nature and timing of such voluntary action will be inherently fact-specific and is likely to differ based on the contracting agency and the underlying type of contract. Because such action is not required by this rule and will depend on the particular factual arrangement, the Department declines to set forth specific protocols for how and when agencies should engage with contractors to proactively insert the applicable Executive order contract clause in contracts that are not subject to the order.

Other commenters, such as River Riders, Inc., requested clarification as to how the Department's interpretation of new contract coverage affects permits that are currently exempt under Executive Order 13838. These comments are discussed in the preamble section below regarding the rescission of Executive Order 13838. To the extent that other commenters sought clarification regarding whether particular contractual situations involve a ''new contract'' under this final rule, such comments did not provide enough information for the Department to definitively opine on coverage. The Department encourages such commenters to reach out to the WHD for compliance assistance regarding their rights and responsibilities under this order.

Because the Department's proposed interpretation of new contract coverage accurately and appropriately implements the coverage principles compelled by sections 8(a) and 9(a) of Executive Order 14026, *see* 86 FR 22837, the Department adopts § 23.30(a) as proposed.

Interaction With Contract Coverage Under Executive Order 13658

As explained in the NPRM, beginning January 1, 2015, covered contracts with the Federal Government were generally subject to the minimum wage requirements of Executive Order 13658 and its implementing regulations at 29 CFR part 10. Executive Order 13658, which was issued in February 2014, required Federal contractors to pay workers working on or in connection with covered Federal contracts at least $10.10 per hour beginning January 1, 2015 and, pursuant to that order, the minimum wage rate has increased annually based on inflation. The Executive Order 13658 minimum wage is currently $10.95 per hour and the minimum hourly cash wage for tipped employees is $7.65 per hour. *See* 85 FR 53850. These rates will increase to $11.25 per hour and $7.90 per hour, respectively, on January 1, 2022. *See* 86 FR 51683. Executive Order 13658 applies to the same four types of Federal contracts as are covered by Executive Order 14026. *Compare* 79 FR 9853 (section 7(d) of Executive Order 13658) *with* 86 FR 22837 (section 8(a) of Executive Order 14026).

Section 6 of Executive Order 14026 states that, as of January 30, 2022, the order supersedes Executive Order 13658 to the extent that it is inconsistent with this order. 86 FR 22836–37. In the NPRM, the Department interpreted this language to mean that workers performing on or in connection with a contract that would be covered by both Executive Order 13658 and Executive Order 14026 are entitled to be paid the higher minimum wage rate under this new order. The Department therefore proposed to include language at § 23.50(d) briefly discussing the relationship between Executive Order 13658 and this order, namely to make clear that workers performing on or in connection with a covered new contract as defined in part 23 must be paid at least the higher minimum wage rate established by Executive Order 14026 rather than the lower minimum wage rate established by Executive Order 13658.

As explained above, however, Executive Order 14026 and part 23 only apply to a ''new contract'' with the Federal Government, which means a contract that is entered into on or after January 30, 2022, or a contract that is renewed or extended (pursuant to an exercised option or otherwise) on or after January 30, 2022. As explained in the NPRM, for some amount of time, the Department anticipates that there will be some existing contracts with the Federal Government that do not qualify as a ''new contract'' for purposes of Executive Order 14026 and thus will remain subject to the minimum wage requirements of Executive Order 13658. For example, an SCA-covered contract entered into on February 15, 2021 is currently subject to the $10.95 minimum wage rate established by Executive Order 13658. That contract will remain subject to the minimum wage rate under Executive Order 13658 until such time as it is renewed or extended, pursuant to an exercised option or otherwise, on or after January 30, 2022, at which time it will become subject to the Executive Order 14026 minimum wage rate. For example, if that contract is subsequently extended on February 15, 2022, the contract will

become subject to the $15.00 minimum wage rate established by Executive Order 14026 on the date of extension, February 15, 2022. In the proposed rule, the Department stated that it anticipates that, in the relatively near future, essentially all covered contracts with the Federal Government will qualify as ''new contracts'' under part 23 and thus will be subject to the higher Executive Order 14026 minimum wage rate; until such time, however, Executive Order 13658 and its regulations at 29 CFR part 10 must remain in place.

In order to minimize potential stakeholder confusion as to whether a particular contract is subject to Executive Order 13658 or to Executive Order 14026, the Department proposed to add clarifying language to the definition of ''new contract'' in the regulations that implemented Executive Order 13658, *see* 29 CFR 10.2, to make clear that a contract that is entered into on or after January 30, 2022, or a contract that was awarded prior to January 30, 2022, but is subsequently extended or renewed (pursuant to an option or otherwise) on or after January 30, 2022, is subject to Executive Order 14026 and part 23 instead of Executive Order 13658 and the 29 CFR part 10 regulations. The provision at 29 CFR 10.2 currently defines a ''new contract'' for purposes of Executive Order 13658 to mean ''a contract that results from a solicitation issued on or after January 1, 2015, or a contract that is awarded outside the solicitation process on or after January 1, 2015.'' That definition further provides, *inter alia,* that Executive Order 13658 also applies to contracts entered into prior to January 1, 2015, if, through bilateral negotiation, on or after January 1, 2015, the contract is renewed, extended, or amended pursuant to certain specified limitations explained in that regulation. *Id.* To provide clarity to stakeholders, the Department proposed to amend the definition of a ''new contract'' under Executive Order 13658 in 29 CFR 10.2 by changing the three references to ''on or after January 1, 2015'' to ''on or between January 1, 2015 and January 29, 2022.'' This clarifying edit was intended to assist stakeholders in recognizing that, beginning January 30, 2022, the higher minimum wage requirement of Executive Order 14026 applies to new contracts.

As previously mentioned, the Department also proposed to add language to part 23 at § 23.50(d) explaining that, unless otherwise excluded by § 23.40, workers performing on or in connection with a covered new contract, as defined in § 23.20, must be paid at least the higher minimum hourly wage rate established by Executive Order 14026 and part 23 rather than the lower hourly minimum wage rate established by Executive Order 13658 and its regulations. The Department further proposed to add substantially similar language to the Executive Order 13658 regulations at § 10.1 to ensure that the contracting community is fully aware of which Executive order and regulations apply to their particular contract. Specifically, the Department proposed to amend § 10.1 by adding paragraph (d), which explained that, as of January 30, 2022, Executive Order 13658 is superseded to the extent that it is inconsistent with Executive Order 14026 and part 23. The proposed new paragraph would further clarify that a covered contract that is entered into on or after January 30, 2022, or that is renewed or extended (pursuant to an option or otherwise) on or after January 30, 2022, is generally subject to the higher minimum wage rate established by Executive Order 14026 and part 23. The Department also proposed to add corresponding information to § 10.5(c) to ensure that stakeholders were aware of their potential obligations under Executive Order 14026 and part 23 even if they inadvertently consult the regulations that were issued under Executive Order 13658.

As explained in the NPRM, in sum, a Federal contract entered into on or after January 1, 2015, that falls within one of the four specified categories of contracts described in part 23 will generally be subject to the minimum wage requirements of either Executive Order 13658 or Executive Order 14026; the date upon which the relevant contract was entered into, extended, or renewed will determine whether the contract qualifies as a ''new contract'' under this Executive order and part 23 or whether it is subject to the lower minimum wage requirement of Executive Order 13658 and the part 10 regulations.

In the proposed rule, the Department noted that contracts with independent regulatory agencies and contracts performed in the territories (*i.e.,* Puerto Rico, the Virgin Islands, Outer Continental Shelf lands as defined in the Outer Continental Shelf Lands Act, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, Wake Island, and Johnston Island) are not subject to Executive Order 13658 or part 10; this final rule does not alter that determination. However, as discussed above, such contracts with the Federal Government are covered by Executive Order 14026 and part 23 to the extent that they fall within the four general types of covered contracts and are entered into, extended, or renewed on or after January 30, 2022. For example, a concessions contract with the Federal Government that is performed wholly within Puerto Rico and that was entered into on October 1, 2020, is not subject to the minimum wage requirement of Executive Order 13658 or 14026. However, if that contract is renewed on October 1, 2022, it will become subject to the minimum wage requirement of Executive Order 14026.

An anonymous commenter asked the Department to clarify that renewed contracts on or after January 30, 2022 will be subject to the higher minimum wage rate set forth in Executive Order 14026. Consistent with the discussion in the NPRM, the Department confirms that, for a contract currently subject to Executive Order 13658 that was entered into prior to January 30, 2022, such contract will become subject to Executive Order 14026 and its higher minimum wage rate if such contract is renewed or extended (pursuant to an option or otherwise) on or after January 30, 2022. For example, a DBA-covered construction contract entered into on October 15, 2020 is currently subject to the $10.95 minimum wage rate established by Executive Order 13658. On January 1, 2022, the wage rate applicable to the contract under Executive Order 13658 will increase to $11.25 based on the annual inflation-based update to that rate. If that contract is subsequently extended pursuant to the exercise of an option on October 15, 2022, the contract will become subject to the $15.00 minimum wage rate established by Executive Order 14026 on the date of extension, October 15, 2022.

The Department also received several comments regarding Executive Order 14026's rescission of Executive Order 13838, which will be discussed below in the preamble section pertaining to that rescission.

Other than these comments, the Department did not receive any requests for specific clarifications in the proposed regulatory text discussing the interaction between Executive Order 13658 and Executive Order 14026. The Department therefore finalizes the corresponding proposed changes to the regulations implementing Executive Order 13658 at 29 CFR 10.1(d), 29 CFR 10.2 (specifically, the definition of *new contract*), and 29 CFR 10.5(c), as well as the proposed regulatory text at § 23.50(d).

Coverage of Types of Contractual Arrangements

Proposed § 23.30(a)(1) set forth the specific types of contractual arrangements with the Federal Government that are covered by Executive Order 14026. The Department noted that Executive Order 14026 and part 23 are intended to apply to a wide range of contracts with the Federal Government for services or construction. Proposed § 23.30(a)(1) would implement the Executive order by generally extending coverage to procurement contracts for construction covered by the DBA; service contracts covered by the SCA; concessions contracts, including any concessions contract excluded by the Department's regulations at 29 CFR 4.133(b); and contracts in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public. The Department further noted that, as was also the case under the Executive Order 13658 rulemaking, these categories are not mutually exclusive—a concessions contract might also be covered by the SCA, as might a contract in connection with Federal property or lands, for example. A contract that falls within any one of the four categories is covered. Each of these categories of contractual agreements is discussed in greater detail below.

Procurement Contracts for Construction: Section 8(a)(i)(A) of the Executive order extends coverage to ''procurement contract[s]'' for ''construction.'' 86 FR 22837. The proposed rule at § 23.30(a)(1)(i) interpreted this provision of the order as referring to any contract covered by the DBA, as amended, and its implementing regulations. The Department noted that this provision reflects that the Executive order and part 23 apply to contracts subject to the DBA itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)–(60). This interpretation is consistent with the discussion of procurement contracts for construction set forth in the Department's final rule implementing Executive Order 13658. *See* 79 FR 60650. For ease of reference, much of that discussion is repeated here.

The DBA applies, in relevant part, to contracts to which the Federal Government is a party, for the construction, alteration, or repair, including painting and decorating, of public buildings and public works of the Federal Government and which require or involve the employment of mechanics or laborers. 40 U.S.C. 3142(a). The DBA's regulatory definition of *construction* is expansive and includes all types of work done on a particular building or work by laborers and mechanics employed by a construction contractor or construction subcontractor. *See* 29 CFR 5.2(j). For purposes of the DBA and thereby the Executive order, a contract is ''for construction'' if ''more than an incidental amount of construction-type activity'' is involved in its performance. *See, e.g., In the Matter of Crown Point, Indiana Outpatient Clinic,* WAB Case No. 86–33, 1987 WL 247049, at *2 (June 26, 1987) (citing *In re: Military Housing, Fort Drum, New York,* WAB Case No. 85–16, 1985 WL 167239 (Aug. 23, 1985)), *aff'd sub nom., Building and Construction Trades Dep't, AFL–CIO* v. *Turnage,* 705 F. Supp. 5 (D.D.C. 1988); 18 Op. O.L.C. 109, 1994 WL 810699, at *5 (May 23, 1994). The term ''public building or public work'' includes any building or work, the construction, prosecution, completion, or repair of which is carried on directly by authority of or with funds of a Federal agency to serve the interest of the general public. *See* 29 CFR 5.2(k).

Proposed § 23.30(b) would implement section 8(b) of Executive Order 14026, 86 FR 22837, which provides that the order applies only to DBA-covered prime contracts that exceed the $2,000 value threshold specified in the DBA. *See* 40 U.S.C. 3142(a). Consistent with the DBA, there is no value threshold requirement for subcontracts awarded under such prime contracts.

The Center for Workplace Compliance expressed support for this proposed interpretation of procurement contracts for construction because it is consistent with the approach set forth in the regulations implementing Executive Order 13658, *see* 29 CFR 10.2. The Center for Workplace Compliance noted that it supports such consistency because ''compliance with the new E.O. will be simplified to the extent that the compliance obligations are similar to those under E.O. 13658.'' The Department did not receive other specific comments regarding this category of contracts and therefore finalizes § 23.30(a)(1)(i) as proposed.

Contracts for Services: Proposed § 23.30(a)(1)(ii) provided that coverage of the Executive order and part 23 encompasses ''contract[s] for services covered by the Service Contract Act.'' This proposed provision implemented sections 8(a)(i)(A) and (B) of the Executive order, which state that the order applies respectively to a ''procurement contract . . . for services'' and a ''contract or contract-like instrument for services covered by the Service Contract Act.'' 86 FR 22837. The Department interpreted a ''procurement contract . . . for services,'' as set forth in section 8(a)(i)(A) of the Executive order, to mean a procurement contract that is subject to the SCA, as amended, and its implementing regulations. The Department viewed a ''contract . . . for services covered by the Service Contract Act'' under section 8(a)(i)(B) of the order as including both procurement and non-procurement contracts for services that are covered by the SCA. The Department therefore incorporated sections 8(a)(i)(A) and (B) of the Executive order in proposed § 23.30(a)(1)(ii) by expressly stating that the requirements of the order apply to service contracts covered by the SCA. This interpretation and approach was consistent with the treatment of service contracts set forth in the Department's final rule implementing Executive Order 13658. *See* 79 FR 60650–51. For ease of reference, much of that discussion is repeated here.

The SCA generally applies to every contract entered into by the United States that ''has as its principal purpose the furnishing of services in the United States through the use of service employees.'' 41 U.S.C. 6702(a)(3). The SCA is intended to cover a wide variety of service contracts with the Federal Government, so long as the principal purpose of the contract is to provide services using service employees. *See, e.g.,* 29 CFR 4.130(a). As reflected in the SCA's regulations, where the principal purpose of the contract with the Federal Government is to provide services through the use of service employees, the contract is covered by the SCA. *See* 29 CFR 4.133(a). Such coverage exists regardless of the direct beneficiary of the services or the source of the funds from which the contractor is paid for the service and irrespective of whether the contractor performs the work in its own establishment, on a Government installation, or elsewhere. *Id.* Coverage of the SCA, however, does not extend to contracts for services to be performed exclusively by persons who are not service employees, *i.e.,* persons who qualify as bona fide executive, administrative, or professional employees as defined in the FLSA's regulations at 29 CFR part 541. Similarly, a contract for professional services performed essentially by bona fide professional employees, with the use of service employees being only a minor factor in contract performance, is not covered by the SCA and thus would not be covered by the Executive order or part 23. *See* 41 U.S.C. 6702(a)(3); 29

CFR 4.113(a), 4.156; WHD Field Operations Handbook (FOH) ¶¶ 14b05, 14c07.

Although the SCA covers contracts with the Federal Government that have the ''principal purpose'' of furnishing services in the United States through the use of service employees regardless of the value of the contract, the prevailing wage requirements of the SCA only apply to covered contracts in excess of $2,500. 41 U.S.C. 6702(a)(2) (recodifying 41 U.S.C. 351(a)). Proposed § 23.30(b) of this rule would implement section 8(b) of the Executive order, which provides that for SCA-covered contracts, the Executive order applies only to those prime contracts that exceed the $2,500 threshold for prevailing wage requirements specified in the SCA. 86 FR 22837. Consistent with the SCA, there is no value threshold requirement for subcontracts awarded under such prime contracts.

In the NPRM, the Department emphasized that service contracts that are not subject to the SCA may still be covered by the order if such contracts qualify as concessions contracts or contracts in connection with Federal property or lands and related to offering services to Federal employees, their dependents, or the general public pursuant to sections 8(a)(i)(C) and (D) of the order. Because service contracts may be covered by the order if they fall within any of these three categories (*e.g.,* SCA-covered contracts, concessions contracts, or contracts in connection with Federal property and related to offering services), the Department anticipated that most contracts for services with the Federal Government would be covered by the Executive order and part 23.

The Center for Workplace Compliance commended this interpretation of service contracts for its consistency with the approach taken in the regulations implementing Executive Order 13658. The Department also received a number of comments requesting that the Department opine as to whether a particular legal instrument is covered by the SCA and thus by Executive Order 14026. For example, the Cline Williams Law Firm requested that the Department determine that contracts between the Federal Government and Federally Qualified Health Centers (FQHCs) to provide medical services to the public are not covered by Executive Order 14026 because they are not subject to the SCA.[11] The Home Care Association of America also requested that the Department exempt from SCA and/or Executive Order 14026 coverage home care providers providing services pursuant to certain agreements with the U.S. Veterans Administration (VA), including Veterans Care Agreements and services provided via the VA Community Care Network. Based on the information provided by these commenters, it does not appear that medical service contracts with FQHCs or the specified VA contracts would qualify as concessions contracts or as contracts in connection with Federal property or lands and related to offering services to Federal employees, their dependents, or the general public; the key question then is whether such contracts are subject to the Service Contract Act.

The Department notes that, with respect to these and similar comments seeking an official determination as to the SCA's applicability to a particular legal agreement, this rulemaking is not the proper forum for obtaining such a determination. A determination that a particular contract is covered by the SCA would have implications beyond this rulemaking, in part because SCA-covered contracts are also subject to other relevant Executive orders pertaining to federal contractors, including Executive Order 13658 and Executive Order 13706, ''Establishing Paid Sick Leave for Federal Contractors.'' Moreover, and while the comments submitted on these questions were helpful, the Department lacks sufficient information and contract-related documentation about these particular legal instruments to definitively opine on their coverage under the SCA, which requires a fact-specific analysis. The Department invites stakeholders with questions regarding potential SCA coverage of particular legal instruments to follow the procedures set forth in 29 CFR 4.101(g) to obtain an official ruling or interpretation as to SCA coverage. In the event that the Department is called upon to issue a coverage determination under the SCA regarding such contracts and determines that such contracts are not covered by the SCA, they would not be subject to Executive Order 14026 if, as appears to be the case, they do not fall within any other enumerated category of covered contracts. If such a contract is ultimately determined to be covered by the SCA, it would also qualify as a covered contract under Executive Order 14026 assuming all other requisite conditions were met (*e.g.,* that the contract qualified as a ''new contract'' under this part). Because the Executive order reflects a clear intent to broadly cover federal service contracts and the Department finds the Home Care Association of America's general claims of hardship that could result from application of the order to the specified VA contracts to be inconsistent with the economy and efficiency rationale underlying Executive Order 14026, the Department believes that it would be inappropriate to grant a special exemption from the Executive order for these types of agreements.[12]

The Department notes that it received many comments, largely from stakeholders in the outdoor recreational industries, pertaining to the Executive Order's coverage of special use permits issued by the Forest Service, Commercial Use Authorizations (CUAs) issued by the National Park Service (NPS), and outfitter and guide permits issued by the Bureau of Land Management (BLM) and the U.S. Fish and Wildlife Service (USFWS), respectively. Although these comments are addressed in more detail in the preamble section pertaining to the coverage of contracts in connection with Federal property and related to offering services, the Department notes that such contracts may also be covered by the SCA.

As recognized by the Department's Administrative Review Board (ARB), Forest Service special use permits generally qualify as SCA-covered contracts, unless they fall within the

[11] In its comment, the Cline Williams Law Firm asserts, inter alia, that FQHCs are not subject to the SCA because the services that they provide are essentially professional medical services that are performed predominantly by healthcare professionals. The Department confirms that a contract for professional services performed essentially by bona fide professional employees, with the use of service employees being only a minor factor in contract performance, is not covered by the SCA and thus would not be covered by the Executive Order or this part. *See* 41 U.S.C. 6702(a)(3); 29 CFR 4.113(a), 4.156; WHD Field Operations Handbook (FOH) ¶¶ 14b05, 14c07. As reflected in the FOH, however, WHD has explained that ''[i]n practice, a 10 to 20 percent guideline has been used to determine whether there is more than a minor use of service employees.'' WHD FOH 14c07(b); *see also* 29 CFR 4.113(a)(3); *In re: Nat'l Cancer Inst.,* BSCA No. 93–10, 1993 WL 832143 (Dec. 30, 1993). The Department thus observes that, because their use of service employees often exceeds that threshold, many federal contracts for medical services are in fact covered by the SCA.

[12] The Department acknowledges that the VA MISSION Act itself expressly provides that ''an eligible entity or provider that enters into [a Veterans Care Agreement] under this section shall not be treated as a Federal contractor or subcontractor for purposes of chapter 67 of title 41 (commonly known as the 'McNamara-O'Hara Service Contract Act of 1965').'' 38 U.S.C. 1703A(i)(3). Without opining more broadly on the other types of contracts discussed by the Home Care Association of America, the Department confirms that providers operating under agreements authorized by this specific statutory provision of the VA MISSION Act are thus not subject to the SCA and would likewise not be covered by Executive Order 14026.

SCA exemption for certain concessions contracts contained in 29 CFR 4.133(b). *See Cradle of Forestry in America Interpretive Assoc.,* ARB Case No. 99–035, 2001 WL 328132, at *5 (ARB March 30, 2001) (stating that ''whether Forest Service [special use permits] are exempt from SCA coverage as concessions contracts would need to be evaluated based upon the specific services being offered at each site''). Thus, because they generally qualify as SCA-covered contracts, Forest Service special use permits will typically be subject to Executive Order 14026's requirements under section 8(a)(i)(B) of the Order and § 23.30(a)(1)(ii). To the extent that the 29 CFR 4.133(b) exemption from SCA coverage applies with respect to a specific special use permit, such a contract will nonetheless generally be subject to the Executive order's requirements under section 8(a)(i)(C) or (D) of the Order and § 23.30(a)(1)(iii) or (iv).

Many stakeholders in the outdoor recreational industries described in their comments that they provide critical services to the general public on federal lands. The Department's understanding is that many such contractors enter into CUA agreements with the NPS, and outfitter and guide permit agreements with the BLM and USFWS, respectively. The principal purpose of these legal instruments (akin to the agreement at issue in the *Cradle of Forestry* decision cited above) seems to be furnishing services through the use of service employees. If this is true, the SCA and thus Executive Order 14026 may generally cover the CUA and outfitter and guide permit agreements that contractors enter into with the NPS, BLM, and USFWS, respectively. The Department notes that a further discussion of the application of section 8(a)(i)(D) of the Executive Order to Forest Service special use permits, NPS CUAs, and BLM and USFWS outfitter and guide permits is set forth below in the discussion of contracts in connection with Federal property and related to offering services for Federal employees, their dependents, or the general public.

The Department did not receive other comments regarding its proposed coverage of service contracts and thus finalizes § 23.30(a)(1)(ii) as proposed.

Contracts for Concessions: Proposed § 23.30(a)(1)(iii) implemented Executive Order 14026's coverage of a ''contract or contract-like instrument for concessions, including any concessions contract excluded by Department of Labor regulations at 29 CFR 4.133(b).'' 86 FR 22837. The proposed definition of *concessions contract* was addressed in the discussion of proposed § 23.20. The discussion of covered concessions contracts herein is consistent with the treatment of concessions contracts set forth in the Department's final rule implementing Executive Order 13658. *See* 79 FR 60652.

The SCA generally covers contracts for concessionaire services. *See* 29 CFR 4.130(a)(11). Pursuant to the Secretary's authority under section 4(b) of the SCA, however, the SCA's regulations specifically exempt from coverage concession contracts ''principally for the furnishing of food, lodging, automobile fuel, souvenirs, newspaper stands, and recreational equipment to the general public.'' 29 CFR 4.133(b); 48 FR 49736, 49753 (Oct. 27, 1983).[13] Proposed § 23.30(a)(1)(iii) extended coverage of the Executive order and part 23 to all concession contracts with the Federal Government, including those exempted from SCA coverage. For example, the Executive order generally covers souvenir shops at national monuments as well as boat rental facilities and fast food restaurants at National Parks. The Department noted that Executive Order 14026 and part 23 would cover contracts in connection with both seasonal recreational services and seasonal recreational equipment rental when such services and equipment are offered to the general public on Federal lands. In addition, consistent with the SCA's implementing regulations at 29 CFR 4.107(a), the Department noted that the Executive order generally applies to concessions contracts with nonappropriated fund instrumentalities under the jurisdiction of the Armed Forces or other Federal agencies.

Proposed § 23.30(b) was substantively identical to the analogous provision in the regulations implementing Executive Order 13658, *see* 29 CFR 10.3(b), and implemented the value threshold requirements of section 8(b) of Executive Order 14026. 86 FR 22837. Pursuant to that section, the Executive order applies to an SCA-covered concessions contract only if it exceeds $2,500. *Id.;* 41 U.S.C. 6702(a)(2). Section 8(b) of the Executive order further provides that, for procurement contracts or contract-like instruments where workers' wages are governed by the FLSA, such as any procurement contracts for concessionaire services that are excluded from SCA coverage under 29 CFR 4.133(b), part 23 applies only to contracts that exceed the $10,000 micro-purchase threshold, as defined in 41 U.S.C. 1902(a). There is no value threshold for application of Executive Order 14026 and part 23 to subcontracts awarded under covered prime contracts or for non-procurement concessions contracts that are not covered by the SCA.

The Department received many comments regarding Executive Order 14026's coverage of concessions contracts. As a threshold matter, a number of commenters, such as the AOA, the Association of Military Banks of America (AMBA), and the Defense Credit Union Council (DCUC), asserted in part that the concessionaires they represent do not qualify as federal contractors because they do not operate under procurement contracts and/or are not considered federal contractors subject to the FAR or other procurement statutes and regulations. As explained in the NPRM and above, Executive Order 14026 applies to both covered procurement and non-procurement contracts, including contracts that are not subject to the FAR.

Consistent with the regulations implementing Executive Order 13658, the Department has broadly defined a *concessions contract* as any contract under which the Federal Government grants a right to use Federal property, including land or facilities, for furnishing services without any substantive restrictions on the type of services provided or the beneficiary of the services rendered. This broad interpretation of the term ''concessions'' best effectuates the inclusive nature of Executive Order 14026 and provides clarity and consistency to stakeholders by mirroring the existing coverage of Executive Order 13658. By expressly applying to both concessions contracts covered by the SCA as well as concessions contracts exempt from the SCA, Executive Order 14026 is explicitly intended to cover concessions contracts for the benefit of the general public as well as for the benefit of the Federal Government itself and its personnel. The Department would thus generally view contracts for the provision of noncommercial educational or interpretive services, energy, transportation, communications, or water services to the general public as within the scope of concessions contracts covered by the Order.

[13] This exemption applies to certain concessions contracts that provide services to the general public, but does not apply to concessions contracts that provide services to the Federal Government or its personnel or to concessions services provided incidentally to the principal purpose of a covered SCA contract. *See, e.g.,* 29 CFR 4.130 (providing an illustrative list of SCA-covered contracts); *In the Matter of Alcatraz Cruises, LLC,* ARB Case No. 07–024, 2009 WL 250456 (ARB Jan. 23, 2009) (holding that the SCA regulatory exemption at 29 CFR 4.133(b) does not apply to National Park Service contracts for ferry transportation services to and from Alcatraz Island).

Importantly, and regardless of the scope of the term ''concessions,'' the Department emphasizes that many such concessions contracts may qualify as SCA-covered contracts and are also likely to fall within the scope of the fourth category of covered contracts set forth at section 8(a)(i)(D) of the Executive Order because such contracts are entered into ''in connection with Federal property'' and ''related to offering services for . . . the general public.'' [14] At the same time, the Department recognizes and agrees that the interpretation of the term ''concessions'' for purposes of Executive Order 14026 and this final rule, and the resulting determination that many concessionaires are federal contractors for purposes of this Executive order and rule, does not mean that such entities and contracts are covered by other laws pertaining to federal contractors; the Department's interpretation here is limited to Executive Order 14026.

The Department received a few comments, including from the U.S. Small Business Administration's Office of Advocacy (SBA Advocacy), expressing concern regarding application of Executive Order 14026 to restaurant franchises on military installations. These comments generally assert that the order imposes a uniquely burdensome requirement on fast food restaurants on military bases because the restaurant owners receive no funding from the Federal Government. They state that such contractors generally pay rent and a portion of their sales in exchange for the ability to conduct business on the military installation. These commenters also assert that, due to restrictions in their contracts with the Federal Government, they cannot raise the prices that they charge for products sold on the military base above the prices offered by competitors in a three-mile radius. A franchise owner on a military base commented that he owns a small business and will not be able to absorb the increase in labor costs that may result from Executive Order 14026. The commenter asserted that being required to pay the Executive order minimum wage would result in his business terminating workers or closing store locations, both of which would affect customer service. This franchise owner also asserted that application of the Executive Order 14026 minimum wage to business establishments on military installations would cause them to operate at a competitive disadvantage because competitor businesses located off the military base would not be affected. For these reasons, some commenters urged the Department to exempt from the Executive Order 14026 minimum wage requirements any entities that do not receive direct funds from the Federal Government (*e.g.,* concessionaires).

The Department received similar comments from the AMBA and the DCUC, respectively, requesting exemption of banks operating on military installations and defense credit unions operating on military installations. These comments raised similar concerns regarding the adverse economic impact on these types of businesses as the other concessaires voiced above. The AMBA explained that banks operating on military installations provide services to both the Federal Government and the base population pursuant to operating agreements between the Military Service and the bank, which generally operate under five-year lease agreements with the Military Service. The AMBA noted that rent is often increased under such leases. As with the concessionaire comments discussed above, the AMBA expressed that banks operating on military bases generally do not receive direct funding from the Federal Government, are unable to raise the prices for their services, and cannot negotiate the rent. The AMBA further stated that, under such operating agreements, the bank is constrained from promoting its services outside the client base. The AMBA requested that the Department either exempt banks operating on military installations from coverage of Executive Order 14026 or require the Federal Government to offset increased labor costs and the value of bank services from lease costs. The DCUC similarly commented that defense credit unions operating on military installations are non-profit entities that provide their services free of charge as part of their operating agreement with the installation commander, which means that the credit unions generally cannot factor government-mandated costs into their pricing model. Both the AMBA and the DCUC assert that application of Executive Order 14026 to the businesses that they represent will lead to more banks and credit unions leaving military bases or otherwise reduce services being offered to the base.[15]

In response to all of the comments received about the economic impact of Executive Order 14026 upon businesses operating on military installations under concessions contracts and/or leases, the Department notes that such comments do not appear to account for several factors that the Department expects will substantially offset any potential adverse economic effects on their businesses. In particular, increasing the minimum wage of workers can reduce absenteeism and turnover in the workplace, improve employee morale and productivity, reduce supervisory costs, and increase the quality of services provided to the Federal Government and the general public. These commenters similarly did not discuss the potential that increased efficiency and quality of services will attract more customers, even where the customer base may be limited due to the enhanced security environment, and result in increased sales or service fees.

The Department further notes that the types of contracts covered by Executive Order 14026 are identical to the categories of contracts covered by Executive Order 13658. While the Department recognizes that the minimum wage under Executive Order 14026 is higher than that imposed by Executive Order 13658, contractors operating on military installations already have familiarity with the principles set forth in Executive Order 14026 and this rule and likely have already found ways to maintain their business operations, to reap the economy and efficiency benefits of the applicable minimum wage, and to absorb or offset any increased labor costs arising from the prior minimum wage rate increase. The Department received numerous similar comments regarding the potential adverse impacts of raising the minimum wage for concessionaires on military installations during the 2014 rulemaking to implement Executive Order 13658, *see* 79 FR 60653; despite the significant concerns expressed regarding the Executive Order 13658 rulemaking, the Department is not aware of any substantial adverse economic impact on such contractors resulting from that minimum wage increase or any widespread closure of such businesses on military installations due to

[14] For example, the lease and operating agreement under which a bank or credit union operates on military installations may qualify as SCA-covered contracts, concessions contracts, and/or contracts in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public; if such a covered contract also qualifies as a ''new contract'' as described in this part, it will thus be subject to Executive Order 14026.

[15] Many of these same concerns were expressed in comments pertaining to outfitter and guide permits and licenses. All such comments regarding such permits and licenses will be addressed in the discussion of contracts in connection with federal land or property and related to offering services below.

Executive Order 13658 in the seven years since those regulations were finalized. Indeed, the commenters have not provided anecdotal or other specific evidence that wage rate increases as a result of Executive Order 13658 had any adverse economic impact on their operations. The Department acknowledges that the AMBA presented information demonstrating a general decline in banks operating on military installations since 2004 due to ''a number of contributing economic and operational factors,'' but the stated period of decline began 10 years before Executive Order 13658 was issued, and AMBA does not refer to and the Department is not aware of any such closures as a result of Executive Order 13658 itself. The argument that an entity operating on a military installation must terminate workers, reduce services, or close businesses due to the new Executive order minimum wage requirements therefore overlooks the benefits of the wage increase and is not supported by the Department's experience in implementing and enforcing Executive Order 13658.

The Department further notes that, for many contracting agencies and contractors negotiating new contracts on or after January 30, 2022, such parties will be aware of Executive Order 14026 and can take into account any potential economic impact of the order on projected labor costs. For example, with respect to some commenters' concerns regarding the restrictions on pricing imposed by their concessions contracts, the Department notes that contractors may have the ability to negotiate a lower percentage of sales paid as rent or royalty to the Federal Government in new contracts prior to application of the Executive order that could help to offset any costs that may be incurred as a result of the order. The Department recognizes that these negotiations may not be possible or feasible for all contractual arrangements, but for at least some contractors, the assertion that a franchisee must terminate workers or close businesses due to the Executive Order 14026 minimum wage requirements overlooks alternatives that may be available through contract renegotiation.

Section 8(a)(i)(C) of Executive Order 14026 reflects a clear intent that concessions contracts with the Federal Government be subject to the minimum wage requirement. The Department therefore declines the commenters' request to exempt entities that do not receive direct funds from the Federal Government (*e.g.,* concessionaires), including military banks and defense credit unions operating on military installations, because such an exemption would be wholly inconsistent with the Executive order's express statement that federal concessions contracts are covered by the order. With respect to AMBA's request that the Department require the Federal Government to offset increased labor costs and the value of bank services from lease costs, the Department lacks such authority. The Department does, however, strongly encourage contracting agencies to consider the economic impact of Executive Order 14026, particularly during contract negotiations, and to take all reasonable and legally permissible steps to ensure that individuals working pursuant to covered contracts are paid in accordance with Executive Order 14026 and to ensure that the economy and efficiency benefits of the order are realized.

With respect to general comments requesting additional examples of concessions contracts that would be covered by Executive Order 14026, the Department notes that such covered contracts would generally include fast food restaurants on military bases, equipment rental facilities at national parks, souvenir shops at national monuments, and snack or gift shops in federal buildings. The Department notes that such contracts could also fall within the scope of another specified category of covered contracts (i.e., they may also qualify as SCA-covered contracts or contracts in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public) because the four categories of contracts covered by Executive Order 14026 are not mutually exclusive.

As described above, after careful consideration of the comments received regarding this category of covered contracts, the Department finalizes its proposed coverage of concessions contracts and the relevant regulatory text at § 23.30(a)(1)(iii), as set forth in the NPRM.

Contracts in Connection with Federal Property or Lands and Related to Offering Services: Proposed § 23.30(a)(1)(iv) implemented section 8(a)(i)(D) of the Executive order, which extends coverage to contracts entered into with the Federal Government in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public. *See* 86 FR 22837; *see also* 79 FR 60655 (Executive Order 13658 final rule preamble discussion of identical provisions in Executive Order 13658 and 29 CFR part 10). To the extent that such agreements are not otherwise covered by § 23.30(a)(1), the Department interpreted this provision in the NPRM as generally including leases of Federal property, including space and facilities, and licenses to use such property entered into by the Federal Government for the purpose of offering services to the Federal Government, its personnel, or the general public. In other words, as the Department explained in the NPRM, a private entity that leases space in a Federal building to provide services to Federal employees or the general public would be covered by the Executive order and part 23 regardless of whether the lease is subject to the SCA. Although evidence that an agency has retained some measure of control over the terms and conditions of the lease or license to provide services is not necessary for purposes of determining applicability of this section, such a circumstance strongly indicates that the agreement involved is covered by section 8(a)(i)(D) of the Executive order and proposed § 23.30(a)(1)(iv). For example, a private fast food or casual dining restaurant that rents space in a Federal building and serves food to the general public would be subject to the Executive order's minimum wage requirements even if the contract does not constitute a concessions contract for purposes of the order and part 23. The Department included in the NPRM additional examples of agreements that would generally be covered by the Executive order and part 23 under this approach, regardless of whether they are subject to the SCA, such as delegated leases of space in a Federal building from an agency to a contractor whereby the contractor operates a child care center, credit union, gift shop, health clinic, or fitness center in the space to serve Federal employees and/or the general public. Consistent with contract coverage under Executive Order 13658, the Department reiterated that the four categories of contracts covered by Executive Order 14026 are not mutually exclusive. A delegated lease of space on a military base from an agency to a contractor whereby the contractor operates a barber shop, for example, would likely qualify both as an SCA-covered contract for services and as a contract entered into with the Federal Government in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public.

Despite this broad definition, the Department noted some limitations to the order's coverage. Coverage under this section only extends to contracts

that are in connection with Federal property or lands. The Department did not interpret section 8(a)(i)(D)'s reference to ''[F]ederal property'' to encompass money; as a result, purely financial transactions with the Federal Government, *i.e.,* contracts that are not in connection with physical property or lands, would not be covered by the Executive order or part 23. For example, if a Federal agency contracts with an outside catering company to provide and deliver coffee for a conference, such a contract would not be considered a covered contract under section 8(a)(i)(D), although it would be a covered contract under section 8(a)(i)(B) if it is covered by the SCA. In addition, section 8(a)(i)(D) coverage only extends to contracts ''related to offering services for [F]ederal employees, their dependents, or the general public.'' Therefore, if a Federal agency contracts with a company to solely supply materials in connection with Federal property or lands (such as napkins or utensils for a concession stand), the Department would not consider the contract to be covered by section 8(a)(i)(D) because it is not a contract related to offering services. Likewise, because a license or permit to conduct a wedding on Federal property or lands generally would not relate to offering services for Federal employees, their dependents, or the general public, but rather would only relate to offering services to the specific individual applicant(s), the Department would not consider such a contract covered by section 8(a)(i)(D).

Pursuant to section 8(b) of Executive Order 14026, 86 FR 22837, and an analogous provision in the regulations implementing Executive Order 13658, *see* 29 CFR 10.3(b), proposed § 23.30(b) explained that the order and part 23 would apply only to SCA-covered prime contracts in connection with Federal property and related to offering services if such contracts exceed $2,500. *Id.;* 41 U.S.C. 6702(a)(2). For procurement contracts in connection with Federal property and related to offering services where employees' wages are governed by the FLSA (rather than the SCA), part 23 would apply only to such contracts that exceed the $10,000 micro-purchase threshold, as defined in 41 U.S.C. 1902(a). As to subcontracts awarded under prime contracts in this category and non-procurement contracts in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public that are not SCA-covered, there is no value threshold for coverage under Executive Order 14026 and part 23.

The Department received a number of comments regarding its proposed coverage of contracts entered into with the Federal Government in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public. Many of these comments pertained to the Executive order's applicability to outfitters and guides operating on federal property or lands, although the Department notes that this category of covered contracts pertains to a much broader array of service contracts and industries than the outdoor recreational industry. As a threshold matter, the Department notes that it discusses all comments regarding the rescission of Executive Order 13838, which exempted certain recreational service contracts from coverage of Executive Order 13658, in the next section immediately following this discussion of contracts in connection with federal lands and related to offering services. Other relevant comments pertaining to this category of covered contracts are discussed below.

Several commenters, such as NELP and the Teamsters, expressed support for Executive Order 14026's coverage of contracts entered into with the Federal Government in connection with federal property or lands and related to offering services for federal employees, their dependents, or the general public, and for the Department's interpretation of such coverage in this part. However, many other commenters, including the National Forest Recreation Association and the National Park Hospitality Association, strongly opposed application of Executive Order 14026 to these legal arrangements and expressed skepticism that the President has authority under the Procurement Act to impose a minimum wage requirement upon non-procurement contracts falling within the scope of this provision. As previously discussed, the Department regards comments pertaining to the legality of the issuance of Executive Order 14026 as beyond the scope of this rulemaking.

Although many commenters recognized that the proposed coverage of this category of contracts mirrors the coverage principles enunciated in the final rule implementing Executive Order 13658, several commenters questioned whether particular legal instruments, such as Forest Service special use permits, NPS CUAs, and BLM and USFWS outfitter and guide permits, constitute ''contracts'' under Executive Order 14026.

As previously discussed in the context of the proposed definition of the terms *contract* and *contract-like instrunment,* the Department has defined these terms collectively for purposes of the Executive order as an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law. This definition broadly includes all contracts and any subcontracts of any tier thereunder, whether negotiated or advertised, including but not limited to lease agreements, licenses, and permits. The types of instruments identified above (i.e., outfitter and guide permits, SUPs, and CUAs) authorize the use of Federal land for specific purposes in exchange for the payment of fees to the Federal Government. Such instruments create obligations that are enforceable or otherwise recognizable at law and hence constitute contracts for purposes of Executive Order 14026 and this part.

The determination of whether an agreement qualifies as a *contract* under Executive Order 14026 and this part does not depend upon whether such agreements are characterized as ''contracts'' for other purposes, including under the specific programs that authorize and administer such agreements. However, the Department nonetheless notes that its conclusion that such instruments are contracts for purposes of Executive Order 14026 is consistent with relevant precedent. For example, and as noted above in the preamble discussion of SCA-covered contracts, the ARB has held that a Forest Service special use permit is a contract under the SCA, *see Cradle of Forestry,* 2001 WL 328132, at *5, and the Department likewise has determined that Forest Service special use permits constitute contracts for purposes of the FLSA. *See* DOL Opinion Letter, WH–449, 1978 WL 51447 (Jan. 26, 1978) (Forest Service SUP was a contract for purposes of FLSA section 13(a)(3)); DOL Opinion Letter, 1995 WL 1032476 (March 24, 1995) (Department of Agriculture license to operate amusement rides constituted a contract for purposes of FLSA section 13(a)(3)).

In its comment, Colorado Ski Country USA (CSCUSA) urged the Department to revisit its conclusion in the 2014 rulemaking implementing Executive Order 13658 that Forest Service ski area permits qualify as contracts or, if the Department reaffirms such a conclusion, requested that the Department specify in the final rule that this determination does not render ski area operators ''federal contractors'' with respect to other federal laws. In response to such comments, and as noted elsewhere in this final rule, Executive Order 14026

expressly applies to nonprocurement contracts that are not subject to the FAR; the fact that Forest Service ski area permits, or other such agreements, are not subject to Federal procurement requirements does not weigh against application of the Executive order to such permits. Forest Service ski area permits constitute an agreement with the Federal Government creating obligations that are enforceable or otherwise recognizable at law; such permits enable the holder to offer services to the general public on federal land. However, the Department's conclusion that Forest Service special use permits, CUAs, and similar instruments constitute *contracts* under Executive Order 14026 and this final rule does not render the holders of such agreements ''federal contractors'' with respect to other laws.

Importantly, the fact that permits, licenses, and CUAs qualify as *contracts* for purposes of the Executive order does not necessarily mean individuals performing work on or in connection with such contract are covered workers. In order for the minimum wage protections of Executive Order 14026 to extend to a particular worker performing work on or in connection with a covered contract, that worker's wages must be governed by the DBA, FLSA, or SCA. The FLSA generally governs the wages of employees of holders of CUAs issued by the NPS and permits issued by the Forest Service, BLM and USFWS, at least to the extent such instruments are not covered by the SCA.

The Department received several comments requesting clarification as to the relevance under the Executive order of 29 U.S.C. 213(a)(3), which exempts employees of certain seasonal amusement and recreational establishments from the FLSA's minimum wage and overtime provisions. As reflected in the exclusion set forth at § 23.40(e) of this part, Executive Order 14026 does not apply to employees employed by establishments that qualify as ''an amusement or recreational establishment, organized camp, or religious or non-profit educational conference center'' and meet the criteria for exemption set forth at 29 U.S.C. 213(a)(3), unless such workers are otherwise covered by the DBA or SCA. That being said, the Department notes that the FLSA's section 13(a)(3) exemption expressly ''does not apply with respect to any employee of a private entity engaged in providing services or facilities (other than, in the case of the exemption from section 206 of this title, a private entity engaged in providing services and facilities directly related to skiing) in a national park or a national forest, or on land in the National Wildlife Refuge System, under a contract with the Secretary of the Interior or the Secretary of Agriculture.'' *See* 29 U.S.C. 213(a)(3). As explained above, the Department has concluded that the holders of CUAs issued by the NPS, and permits issued by the Forest Service, BLM and USFWS, are operating under a contract with the Secretary of the Interior or the Secretary of Agriculture. Thus, the FLSA's section 13(a)(3) exemption will typically not apply to such holders. In sum, to the extent that (i) an entity satisfies the criteria for the 29 U.S.C. 213(a)(3) exemption under the FLSA, and (ii) the wages of the entity's workers are also not governed by the SCA or DBA, Executive Order 14026 would not apply to the entity's workers.

Numerous commenters asserted that the types of agreements that the Department has determined fall within the scope of contracts in connection with federal property or land and related to offering services, such as Forest Service special use permits and BLM and USFWS outfitter and guide permits, contain unique provisions or reflect unique circumstances that render them unlike other more traditional federal contracts; many such commenters thus urged that such agreements be exempt from coverage of Executive Order 14026. Many commenters, including the AOA and SBA Advocacy, noted that, unlike procurement contracts, these instruments do not contain a mechanism by which the holder of the instrument can ''pass on'' potential costs related to operation of the Executive order to contracting agencies; indeed, such commenters noted that holders of these instruments typically pay the Federal Government for the opportunity to provide services on federal lands. Commenters, like the AOA, also noted that the holders of such instruments may have only limited ability to ''pass on'' increased labor costs to the public because rates are often subject to government regulation. In any event, such commenters observed, increasing costs charged to the general public for such services on federal lands would run contrary to current policy efforts to expand access to outdoor recreational opportunities, particularly among traditionally underrepresented or underserved communities. Such commenters also generally argued that Executive Order 14026 will cause such permit holders to operate at a competitive disadvantage because competitor businesses not operating under contracts covered by the Executive order would not be affected and covered businesses could therefore lose customers to competitors.

Other commenters, such as AVA Rafting & Zipline, the Colorado Adventure Center, and the Nantahala Outdoor Center, noted that application of Executive Order 14026 to their outfitter and guide permits would result in their business needing to reduce employee work hours, reduce services, or increase prices such that only the wealthy will be able to enjoy the services offered, thereby potentially causing individuals to attempt excursions on federal lands without the use of expert guides. A few commenters, like Lasting Adventures, Inc., noted that Executive Order 14026 will significantly increase the labor costs of entities performing overnight and/or multi-day excursions in national parks, where overtime costs will be substantial and are unavoidable. Several commenters, including AOA and SBA Advocacy, thus asserted that application of Executive Order 14026 to such instrument holders, particularly for small businesses, will be financially devastating. For these reasons, some commenters, including the Clear Creek Rafting Company, the Colorado River Outfitters Association, Indian Head Canoes, Lasting Adventures, Inc., Nantahala Outdoor Center, and Plum Branch Yacht Club, requested that the Department exempt from coverage of Executive Order 14026 concessionaires, lease holders, and/or seasonal recreational businesses, or a smaller subset of such stakeholders, who have contracts and permits on Federal property or lands.

As a threshold matter, the Department notes that many of these comments regarding the financial impact of the Executive order upon this category of covered contracts are addressed in detail in the economic impact analysis set forth in section IV of the final rule. In response to these comments regarding the financial impact of Executive Order 14026 upon such permittees, licensees, and CUA holders, the Department recognizes and acknowledges that there may be particular challenges and constraints experienced by non-procurement contractors that do not exist under more traditional procurement contracts. Nonetheless, the Department anticipates that the economy and efficiency benefits of Executive Order 14026 will offset potential costs, including for the holders of these legal instruments. As with the comments from businesses operating on military installations under concessions

contracts discussed above, these comments generally do not account for several factors that the Department expects will substantially offset any potential adverse economic effects on their businesses arising from application of the Executive order. In particular, these commenters do not seem to consider that increasing the minimum wage of their workers can reduce absenteeism and turnover in the workplace, improve employee morale and productivity, reduce supervisory and training costs, and increase the quality of services provided to the Federal Government and the general public. These commenters similarly do not account for the potential that increased efficiency and quality of services will attract more customers and result in increased sales. Such benefits may be realized even where the contractor has limited ability to transfer costs to the contracting agency or raise prices of the services that it offers.

With respect to the comments requesting exemption of such contracts from coverage of Executive Order 14026, the Department notes that section 8(a)(i)(D) of Executive Order 14026 states that contracts in connection with Federal property and related to offering services for federal employees, their dependents, or the general public are subject to the minimum wage requirement. Moreover, and as discussed in the next section, Executive Order 14026 expressly rescinds, as of January 30, 2022, Executive Order 13838, which exempted many such contracts from coverage of Executive Order 13658. Executive Order 14026 thus evinces a clear intent that such contracts should be subject to its requirements. For the reasons explained above, the Department therefore declines commenters' request to create an exemption for permittees, licensees, and CUA holders.

With respect to commenter requests for clarification as to whether particular legal arrangements qualify as covered contracts in connection with federal property or lands and related to offering services, such comments generally did not provide sufficient information for the Department to be able to definitively opine on their coverage. The Department encourages commenters and other stakeholders with specific coverage questions to contact WHD for compliance assistance in determining their rights and responsibilities under Executive Order 14026. However, the Department can address a few specific questions and hypotheticals in order to provide additional clarity to the general public regarding the scope of coverage of this category of contracts.

Importantly, coverage of contracts in connection with federal property or lands set forth in section 8(a)(i)(D) only extends to contracts ''related to offering services for Federal employees, their dependents, or the general public.'' Thus, if an entity obtains a license or permit to provide services on federal lands, but such services are not being offered to the Federal Government, federal employees, their dependents, or the general public, that particular license or permit would not be subject to the Executive order. For example, the Center for Workplace Compliance requested clarification as to whether the Executive order would apply if a federal contractor negotiated a right-of-way to use federal lands, but that right-of-way was not related to offering services to federal employees, their dependents, or the general public. The Department confirms that, if the right-of-way is not in any way related to offering services to the Federal Government, its employees, their dependents, or the general public, such a legal instrument would not be covered by Executive Order 14026.

The Department also received a few comments, such as from MAD Adventures & Grand Adventures, the Nantahala Outdoor Center, and the NSAA, requesting clarification about how Executive Order 14026 applies to recreational service providers that operate businesses on both private and federal lands, including whether workers performing on private lands are subject to the Executive order. SBA Advocacy, for example, questioned how the Executive order would impact an outfitter providing river tours that has multiple Forest Service permits, but also operates nearby activities, restaurants, and lodging on private lands and only 60 percent of their employees work in areas that have anything to do with the federal permits. In response to these and similar examples raised by commenters, the Department first emphasizes that the Executive order minimum wage rate must be paid to workers performing on or in connection with covered contracts, regardless of where such workers are located. *See* 79 FR 60658 (advising that Executive Order 13658 applies to ''FLSA-covered employees working on or in connection with DBA-covered contracts regardless of whether such employees are physically present on the DBA-covered construction worksite''). For example, assume that a guide operates a business offering multi-day hiking and camping excursions in a national park pursuant to a permit that is covered by Executive Order 14026. If, during the course of the multi-day excursion, the guide briefly must lead its customers across a stretch of non-federal land that is technically owned by the state, such worker would still be regarded as performing ''on'' the covered contract and entitled to the Executive order minimum wage rate even for the time spent on non-federal land. If the guide employs a clerk at the company's off-site headquarters to process payroll for its workers leading excursions in the national park, that clerk would be regarded as peforming ''in connection with'' the covered contract even though they are not directly working on federal lands and would be entitled to the Executive order minimum wage for such time (unless they fall within the scope of the ''20 percent exemption'' provided at § 23.40(f) and discussed below).

Importantly, however, Executive Order 14026 only requires that workers be paid the Executive order minimum wage for hours worked on or in connection with a covered contract. The category of covered contracts set forth at section 8(a)(i)(D) of the order is limited to contracts that are in connection with federal lands or property. In the example presented by SBA Advocacy, the outfitter providing river tours pursuant to a covered Forest Service permit must pay the applicable Executive order minimum wage rate to its workers performing on or in connection with that permit. However, to the extent that the outfitter conducts separate and distinct activities on private land in the area, it is unlikely that the Executive order would apply to such activities. Unless the contractor is operating pursuant to an SCA-covered contract with the Federal Government, that contractor's separate and distinct recreational services (or other commercial activities) on private land would not be subject to Executive Order 14026. (The Department notes that, to the extent that a permit or license is subject to the SCA because it is a contract with the Federal Government principally for services through the use of service employees, such contract would be covered by the Executive order regardless of whether the services are performed on public or private land. In the example given, however, where an outfitter operates river tours in an adjacent state park or owns a restaurant in a nearby town, for example, there is no indication that the SCA would apply to such situations.) This same analysis would apply to the Executive order's coverage of subcontracts.[16]

[16] In its comment, the NSAA asserts that ''a unique, industry-specific federal law'' called the

Continued

The Department also received several specific requests for the Department to provide clarification on the Executive order's application to particular factual circumstances that may fall within this category of contracts, such as wilderness therapy programs, outdoor behavioral health services, day and residential youth camps, and other arrangements for services provided on federal lands. The Department lacks sufficient factual information regarding these programs and their authorizing contracts to be able to definitively determine their coverage in this final rule, but encourages such stakeholders with questions regarding coverage of their particular contacts to either informally contact WHD for compliance assistance or to follow the procedures set forth in this rule to obtain a formal ruling or interpretation as to coverage.

The Department appreciates the many comments received regarding its proposed coverage of contracts in connection with federal property or lands and related to offering services. For the reasons explained above, the Department adopts § 23.30(a)(1)(iv) as proposed.

Rescission of Executive Order 13838 Exemption for Contracts in Connection with Seasonal Recreational Services and Seasonal Recreational Equipment Rental Offered for Public Use on Federal Lands: As previously discussed, Executive Order 13658 was issued on February 12, 2014, and established a minimum wage rate that applied to the same four types of Federal contracts to which Executive Order 14026 applies. On May 25, 2018, Executive Order 13838 amended Executive Order 13658 to exclude from coverage contracts entered into with the Federal Government in connection with seasonal recreational services or seasonal recreational equipment rental for the general public on Federal lands. On September 26, 2018, the Department implemented Executive Order 13838 by adding the required exclusion to the regulations for Executive Order 13658 at 29 CFR 10.4(g). *See* 83 FR 48537.

Section 6 of Executive Order 14026 revokes Executive Order 13838 as of January 30, 2022. *See* 86 FR 22836. The NPRM thus explained that, as of January 30, 2022, contracts entered into with the Federal Government in connection with seasonal recreational services or seasonal recreational equipment rental for the general public on Federal lands will be subject to the minimum wage requirements of either Executive Order 13658 or Executive Order 14026 depending on the date that the relevant contract was entered into, renewed, or extended. (See the preamble discussion accompanying § 23.30 above for more information regarding the interaction between Executive Orders 13658 and 14026 with respect to contract coverage.) Such contracts include contracts in connection with river running, hunting, fishing, horseback riding, camping, mountaineering activities, recreational ski services, and youth camps offered for public use on Federal lands. To effectuate the rescission of Executive Order 13838, the Department proposed to remove in its entirety the exclusion of such contracts set forth at § 10.4(g) in the regulations implementing Executive Order 13658. Consistent with such rescission, the Department also declined to exclude such contracts in part 23.

The Department received many comments regarding Executive Order 14026's rescission of Executive Order 13838 and the Department's proposed interpretation of such rescission. Several commenters, including A Better Balance, the AFL–CIO and CWA, AFSCME, NELP, the SEIU, and the Teamsters, expressed strong support for this rescission. NELP, for example, asserted that Executive Order 13838 ''unjustly excluded those providing recreational service work on federal lands from the contractor minimum wage'' and commended Executive Order 14026 for restoring minimum wage protections to workers performing on or in connection with such contracts. The Center for Workplace Compliance did not express any opinion on the policy decision itself, but stated that the Department's proposal that ''[c]ertain concessions contracts with respect to seasonal recreational services or equipment rental are not excluded from coverage'' pursuant to this rescission is ''compelled by'' and ''consistent with'' the policy decisions set forth in Executive Order 14026.

The Department also received many comments, including from the AOA, Nantahala Outdoor Center, and Tennessee Paddlesports Association, strongly opposing the rescission of Executive Order 13838 and requesting that the President or the Department extend the existing exemption for recreational service contracts under Executive Order 13658 and create a new similar exemption for such contracts under Executive Order 14026. Several commenters, including the AOA, asserted that the Department's NPRM ''grossly misstate[d]'' the future applicability of Executive Order 13658 and Executive Order 14026 to contracts covered by Executive Order 13838.

As a threshold matter, and as recognized by many commenters, section 6 of Executive Order 14026 explicitly revokes Executive Order 13838, as of January 30, 2022. *See* 86 FR 22836. The Executive order itself thus reflects a clear intent that, as of January 30, 2022, contracts entered into with the Federal Government in connection with seasonal recreational services or seasonal recreational equipment rental for the general public on Federal lands should no longer be exempt from the minimum wage requirement of Executive Order 13658. Moreover, section 8 of Executive Order 14026 reflects that such contracts are intended to be covered by this Executive order to the extent they qualify as ''new contracts'' on or after January 30, 2022. The Department therefore does not have the authority to unilaterally exempt such contracts from either Executive Order 13658 or Executive Order 14026; such exclusions would be in clear derogation of both the letter and spirit of Executive Order 14026.

The Department recognizes, however, that some of its statements in the NPRM could be construed in an overbroad or imprecise manner and thus endeavors to clarify in this final rule the coverage of contracts that are currently exempt by Executive Order 13838. In order to do so, and in response to confusion and concern expressed by some commenters, such as the AOA and River Riders, Inc., the Department will address coverage regarding each potential subset of these contracts below:

(1) Recreational Service Contracts Entered Into Prior to January 1, 2015: In its comment, AOA states that there are ''existing contracts in place pre-dating Executive Order 13658 that would not have been considered 'new' contracts under Executive Order 13658 and thus . . . would not be subject to the minimum wage requirements of that Executive Order.'' The Department agrees that, to the extent that an existing contract was entered into prior to January 1, 2015, and has not been subsequently renewed, extended, or

Fee Provision Statute, *see* 16 U.S.C. 497c, essentially precludes the Department from asserting Executive Order 14026 coverage over subcontracts for ski areas operating under Forest Service special use permits that, inter alia, are performed on private land. The Department disagrees with such an assertion and perceives no conflict between these two laws. Executive Order 14026 creates an independent legal obligation that is distinct from requirements that may exist under the Fee Provision Statute; neither the Executive order nor this rule modify any applicable definitions or requirements under the Fee Provision Statute pertaining to subcontracts. Contrary to the NSAA's assertion, Executive Order 14026 in no way ''seeks to redefine the scope of the rental fee provisions within these special use permits'' as established under that statute.

amended pursuant to a modification that is outside the scope of the contract, such contract would not qualify as a ''new contract'' under Executive Order 13658 and would not be subject to its minimum wage requirement. The Department notes that, if such contract is renewed or extended, pursuant to an exercised option period or otherwise, on or after January 30, 2022, it would qualify as a ''new contract'' under Executive Order 14026.

(2) Recreational Service Contracts Entered Into, Renewed, Extended, or Amended Pursuant to a Modification Outside the Scope Between January 1, 2015 and January 29, 2022: Executive Order 13838 currently exempts contracts in connection with seasonal recreational services or seasonal recreational equipment rental for the general public on federal lands that otherwise would have qualified as ''new contracts'' under Executive Order 13658 (*i.e.,* contracts that were entered into, renewed, extended, or amended pursuant to an outside-the-scope modification between January 1, 2015 and January 29, 2022) from coverage of Executive Order 13658. The AOA correctly notes that Executive Order 13838 is not rescinded until January 30, 2022, and thus it presently exempts such contracts from the Executive Order 13658 minimum wage requirement. As of January 30, 2022, Executive Order 13838 is rescinded. To implement this rescission, contracting agencies will need to take steps, to the extent permitted by law, to exercise any applicable authority to insert the Executive Order 13658 contract clause into contracts that were entered into, renewed, extended, or amended pursuant to an outside-the-scope modification between January 1, 2015 and January 29, 2022, and to ensure that those contracts comply with the requirements of Executive Order 13658 on or after January 30, 2022.

The AOA accurately notes that Executive Order 13838 remains in place until January 30, 2022; solicitations that are issued and contracts that are entered into prior to January 30, 2022 thus will not include the Executive Order 13658 contract clause until on or after January 30, 2022. To the extent that the AOA suggests it is improper for the Department to remove the existing regulatory exclusion for recreational service contracts set forth at § 10.4(g) as part of this rulemaking, the Department strongly disagrees and notes that the removal of this provision will not be effective until January 30, 2022, consistent with the date of rescission stated in Executive Order 14026. To be clear, the Department is not requiring, or even encouraging, contracting agencies to take steps to insert (or re-insert) the Executive Order 13658 minimum wage clause in existing recreational service contracts until January 30, 2022; the Department agrees with AOA that action to incorporate the Executive Order 13658 contract clause into contracts exempted by Executive Order 13838 would not be permissible until after Executive Order 13838 is officially rescinded.

(3) Recreational Service Contracts Entered Into, Extended, or Renewed (Pursuant to an Option or Otherwise) On or After January 30, 2022: As recognized by most commenters, and consistent with the general ''new contract'' principles applicable to all covered contracts, Executive Order 14026 will apply to brand-new recreational service contracts that are entered into on or after January 30, 2022. Executive Order 14026 will also apply to recreational service contracts that were entered into prior to January 30, 2022, if, on or after January 30, 2022: (1) The contract is renewed; (2) the contract is extended; or (3) an option on the contract is exercised.

The Department expects that these clarifications will resolve much of the confusion expressed by commenters regarding the rescission of Executive Order 13838. The Department adopts the provisions implementing this rescission as proposed in the NPRM, but encourages contracting agencies, contractors, and workers with questions about the coverage of recreational service contracts to contact the WHD for compliance assistance as needed.

Relation to the Walsh-Healey Public Contracts Act: Finally, in the NPRM, the Department proposed to include as § 23.30(d) a statement that contracts for the manufacturing or furnishing of materials, supplies, articles, or equipment to the Federal Government, including those subject to the Walsh-Healey Public Contracts Act (PCA), 41 U.S.C. 6501 *et seq.,* would not be covered by Executive Order 14026 or part 23. Consistent with the implementation of Executive Order 13658, *see* 79 FR 60657, the Department noted that it intends to follow the SCA's regulations at 29 CFR 4.117 in distinguishing between work that is subject to the PCA and work that is subject to the SCA (and therefore Executive Order 14026). The Department similarly proposed to follow the regulations set forth in the FAR at 48 CFR 22.402(b) in addressing whether the DBA (and thus the Executive order) would apply to construction work on a PCA contract. Under that proposed approach, where a PCA-covered contract involves a substantial and segregable amount of construction work that is subject to the DBA, workers whose wages are governed by the DBA or FLSA would be covered by the Executive order for the hours that they spend performing on such DBA-covered construction work.

A few commenters, such as the AFL–CIO and CWA, NELP, the SEIU, and the Teamsters, requested that the Department expand coverage of Executive Order 14026 to contracts for goods, including contracts that are covered by the PCA. Although the Department appreciates such feedback, section 8 of Executive Order 14026 explicitly makes clear that the order only applies to the four enumerated types of service and construction contracts under which workers' wages are governed by the DBA, FLSA, or SCA. The Department does not have the authority in this rulemaking to expand coverage beyond the terms of the order to PCA-covered contracts.

Coverage of Subcontracts

Consistent with the rulemaking implementing Executive Order 13658, *see* 79 FR 60657–58, the Department noted in the NPRM that the same test for determining application of Executive Order 14026 to prime contracts applies to the determination of whether a subcontract is covered by the order, with the sole distinction that the value threshold requirements set forth in section 8(b) of the order do not apply to subcontracts. In other words, in order for the requirements of Executive Order 14026 to apply to a subcontract, the subcontract must satisfy all of the following prongs: (1) It must qualify as a *contract* or *contract-like instrument* under the definition set forth in part 23, (2) it must fall within one of the four specifically enumerated types of contracts set forth in section 8(a) of the order and § 23.30, and (3) the wages of workers under the contract must be governed by the DBA, SCA, or FLSA.

Pursuant to this approach, only covered subcontracts of covered prime contracts are subject to the requirements of the Executive order. Just as the Executive order does not apply to prime contracts for the manufacturing or furnishing of materials, supplies, articles, or equipment, it likewise does not apply to subcontracts for the manufacturing or furnishing of materials, supplies, articles, or equipment. In other words, the Executive order does not apply to subcontracts for the manufacturing or furnishing of materials, supplies, articles, or equipment between a manufacturer or other supplier and a

covered contractor for use on a covered Federal contract. For example, a subcontract to supply napkins and utensils to a covered prime contractor operating a fast food restaurant on a military base is not a covered subcontract for purposes of this order. The Executive order likewise does not apply to contracts under which a contractor orders materials from a construction materials retailer.

Several commenters, including ABC, AOA, and NSAA, requested that the Department clarify the proposed coverage of subcontracts and specifically address whether suppliers and vendors are generally subject to Executive Order 14026. As explained in the NPRM, the coverage of subcontracts under Executive Order 14026 follows the same analysis as did subcontract coverage under Executive Order 13658. Consistent with the rulemaking implementing Executive Order 13658, the Department affirms that the same test for determining whether a prime contract is covered by Executive Order 14026 applies to determining whether a subcontract is covered by the order, with the only difference being that the value threshold requirements set forth in section 8(b) of the order do not apply to subcontracts. Pursuant to this approach, only covered subcontracts of covered prime contracts are subject to the requirements of Executive Order 14026.

The Department emphasizes that, just as Executive Order 14026 does not apply to prime contracts for the manufacturing or furnishing of materials, supplies, articles, or equipment, it likewise does not apply to subcontracts for the manufacturing or furnishing of materials, supplies, articles, or equipment. To be clear, the Executive order does not apply to subcontracts for the manufacturing or furnishing of materials, supplies, articles, or equipment between a manufacturer or other supplier and a covered contractor for use on a covered federal contract. For example, a contract to supply paper to a credit union operating on a military base is not a covered subcontract for purposes of Executive Order 14026. Likewise, a contract supplying tents to an outfitter company operating in a national park would not be a covered subcontract under the order. The Executive order likewise does not apply to contracts under which a contractor orders materials from a construction materials retailer.

With respect to the suggestion made by a few commenters, including AOA, that the Department amend the regulatory text to more clearly reflect the above analysis of subcontract coverage, the Department notes that § 23.30(d) expressly states that ''[t]his part does not apply to contracts for the manufacturing or furnishing of materials, supplies, articles, or equipment to the Federal Government, including those that are subject to the Walsh-Healey Public Contracts Act, 41 U.S.C. 6501 *et seq.*'' Moreover, § 23.20 defines the term *contract* to include all contracts and any subcontracts of any tier thereunder. The Department believes that the regulatory text is sufficiently clear for stakeholders to understand that subcontracts for the manufacturing or furnishing or supplies, materials, and equipment to the Federal Government are not subject to the Executive order. The same general coverage principles throughout this part apply to both prime contracts and subcontracts, with the sole exception of the value threshold; the Department thus believes that it is most straightforward for the regulatory text to address prime contracts and subcontracts collectively, except for the limited instances where the Executive order compels their disparate treatment.

However, the Department has carefully considered the comments expressing confusion regarding subcontract coverage and/or the requests to codify this preamble language. The Department has therefore decided to amend paragraph (h) of the contract clause set forth in Appendix A to explicitly add the following sentence: ''Executive Order 14026 does not apply to subcontracts for the manufacturing or furnishing of materials, supplies, articles, or equipment, and this clause is not required to be inserted in such subcontracts.'' The Department believes that this clarification will mitigate the confusion expressed by some stakeholders regarding coverage of subcontracts and contractors' flow-down responsibilities.

Coverage of Workers

Proposed § 23.30(a)(2) implemented section 8(a)(ii) of Executive Order 14026, which provides that the minimum wage requirements of the order only apply to contracts covered by section 8(a)(i) of the order if the wages of workers under such contracts are subject to the FLSA, SCA, or DBA. 86 FR 22837. The Executive order thus provides that its protections only extend to workers performing on or in connection with contracts covered by the Executive order whose wages also are governed by the FLSA, SCA, or DBA. *Id.* For example, the order does not extend to workers performing on contracts governed by the PCA. Moreover, as discussed in the NPRM and below, employees who are exempt from the minimum wage protections of the FLSA under 29 U.S.C. 213(a) would similarly not be subject to the minimum wage protections of Executive Order 14026, unless those workers' wages are calculated pursuant to section 14(c) certificates or those workers are otherwise covered by the DBA or SCA. The following discussion of worker coverage under Executive Order 14026 is consistent with the analysis of worker coverage that appeared in the Department's final rule implementing Executive Order 13658, *see* 79 FR 60658, but is repeated here for ease of reference.

Workers Whose Wages Are ''Governed By'' the FLSA, SCA, or DBA

In determining whether a worker's wages are ''governed by'' the FLSA for purposes of section 8(a)(ii) of the Executive order and part 23, the Department interpreted this provision as referring to employees who are entitled to the minimum wage under FLSA section 6(a)(1), employees whose wages are calculated pursuant to special certificates issued under FLSA section 14(c), and tipped employees under FLSA section 3(t) who are not otherwise covered by the SCA or the DBA. *See* 29 U.S.C. 203(t), 206(a)(1), 214(c).

In evaluating whether a worker's wages are ''governed by'' the SCA for purposes of the Executive order, the Department interpreted such provision as referring to service employees who are entitled to prevailing wages under the SCA. *See* 29 CFR 4.150 through 4.156. The Department noted that workers whose wages are subject to the SCA include individuals who are employed on an SCA contract and individually registered in a bona fide apprenticeship program registered with the Department's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship.

The Department also interpreted the language in section 8(a)(ii) of Executive Order 14026 and proposed § 23.30(a)(2) as extending coverage to FLSA-covered employees who provide support on an SCA-covered contract but who are not entitled to prevailing wages under the SCA. 41 U.S.C. 6701(3).[17] The

[17] The Department notes that, under the SCA, ''service employees'' directly engaged in providing specific services called for by the SCA-covered contract are entitled to SCA prevailing wage rates. Meanwhile, ''service employees'' who do not perform the services required by an SCA-covered contract but whose duties are necessary to the contract's performance must be paid at least the

Department noted that such workers would be covered by the plain language of section 8(a) of the Executive order because they are performing in connection with a contract covered by the order and their wages are governed by the FLSA.

In evaluating whether a worker's wages are ''governed by'' the DBA for purposes of the order, the proposed rule interpreted such language as referring to laborers and mechanics who are covered by the DBA. This would include any individual who is employed on a DBA-covered contract and individually registered in a bona fide apprenticeship program registered with the Department's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship. The Department also interpreted the language in section 8(a)(ii) of Executive Order 14026 and proposed § 23.30(a)(2) as extending coverage to workers performing on or in connection with DBA-covered contracts for construction who are not laborers or mechanics but whose wages are governed by the FLSA. Although such workers are not covered by the DBA itself because they are not ''laborers and mechanics,'' 40 U.S.C. 3142(b), such individuals are workers performing on or in connection with a contract subject to the Executive order whose wages are governed by the FLSA and thus are covered by the plain language of section 8(a) of the Executive order. 86 FR 22837. The proposed rule would extend this coverage to FLSA-covered employees working on or in connection with DBA-covered contracts regardless of whether such employees are physically present on the DBA-covered construction worksite.

The Department also noted in the NPRM that when state or local government employees are performing on or in connection with covered contracts and their wages are subject to the FLSA or the SCA, such employees are entitled to the protections of the Executive order and part 23. The DBA does not apply to construction performed by state or local government employees.

FLSA minimum wage. *See* 29 CFR 4.150 through 4.155; WHD FOH ¶ 14b05(c). For purposes of clarity, the Department refers to this latter category of workers who are entitled to receive the FLSA minimum wage as ''FLSA-covered'' workers throughout this rule even though those workers' right to the FLSA minimum wage technically derives from the SCA itself. *See* 41 U.S.C. 6704(a).

Workers Performing ''On Or In Connection With'' Covered Contracts

Section 1 of Executive Order 14026 expressly states that the minimum wage requirements of the order apply to workers performing work ''on or in connection with'' covered contracts. 86 FR 22835. Consistent with the Executive Order 13658 rulemaking, *see* 79 FR 60659–62, the Department proposed to interpret these terms in a manner consistent with SCA regulations, *see, e.g.,* 29 CFR 4.150–4.155. In the proposed rule, the Department reiterated these interpretations, which are summarized below and reflected in the regulatory text pertaining to the definition of *worker* in § 23.20 for purposes of clarity.

Specifically, the Department noted that workers performing ''on'' a covered contract are those workers directly performing the specific services called for by the contract, and whether a worker is performing ''on'' a covered contract would be determined, as explained in the final rule implementing Executive Order 13658, *see* 79 FR 60660, in part by the scope of work or a similar statement set forth in the covered contract that identifies the work (*e.g.,* the services or construction) to be performed under the contract. Under this approach, all laborers and mechanics engaged in the construction of a public building or public work on the site of the work will be regarded as performing ''on'' a DBA-covered contract, and all service employees performing the specific services called for by an SCA-covered contract will also be regarded as performing ''on'' a contract covered by the Executive order. In other words, any worker who is entitled to be paid prevailing wages under the DBA or SCA [18] would necessarily be performing ''on'' a covered contract. For purposes of concessions contracts and contracts in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public that are not covered by the SCA, the Department would regard any worker performing the specific services called for by the contract as performing ''on'' the covered contract.

The Department further noted that it would consider a worker performing ''in connection with'' a covered contract to be any worker who is performing work activities that are necessary to the performance of a covered contract but who is not directly engaged in performing the specific services called for by the contract itself. For example, a payroll clerk who is not a DBA-covered laborer or mechanic directly performing the construction identified in the DBA contract, but whose services are necessary to the performance of the contract, would necessarily be performing ''in connection with'' a covered contract. This standard, also articulated in the Executive Order 13658 rulemaking, was derived from SCA regulations. *See* 79 FR 60659 (citing 29 CFR 4.150–4.155).

The Department noted that it proposed to include, as it did in the Executive Order 13658 rulemaking, an exclusion from coverage for workers who spend less than 20 percent of their work hours in a workweek performing ''in connection with'' covered contracts. This proposed exclusion does not apply to any worker performing ''on'' a covered contract whose wages are governed by the FLSA, SCA, or DBA. The proposed exclusion, which appears in § 23.40(f), is explained in greater detail below in the discussion of the Exclusions section.

The Department stated in the NPRM, that just as in the final rule implementing Executive Order 13658, the Executive order does not extend to workers who are not engaged in working on or in connection with a covered contract. For example, a technician who is hired to repair a DBA contractor's electronic time system or a janitor who is hired to clean the bathrooms at the DBA contractor's company headquarters are not covered by the order because they are not performing the specific duties called for by the contract or other services or work necessary to the performance of the contract. Similarly, the Executive order would not apply to a landscaper at the office of an SCA contractor because that worker is not performing the specific duties called for by the SCA contract or other services or work necessary to the performance of the contract. Similarly, unless the redesign of the sign was called for by the concessions contract itself or otherwise necessary to the performance of the contract, the Executive order would not apply to a worker hired by a covered concessionaire to redesign the storefront sign for a snack shop in a National Park. The Department noted in the NPRM that because Executive Order 14026 and part 23 do not apply to workers of Federal contractors who do no work on or in connection with a covered contract, a contractor could be required to pay the Executive order minimum wage to some of its workers but not others. In other words, it is not

[18] This includes workers with disabilities whose commensurate wage rates calculated pursuant to a section 14(c) certificate are based upon the applicable SCA prevailing wage rate.

the case that because a contractor has one or more Federal contracts, all of its workers or projects are covered by the order.

In the NPRM, the Department further noted that Executive Order 14026's minimum wage requirements only extend to the hours worked by covered workers performing on or in connection with covered contracts. As the Department explained in the final rule implementing Executive Order 13658, *see* 79 FR 60672, in situations where contractors are not exclusively engaged in contract work covered by the Executive order, and there are adequate records segregating the periods in which work was performed on or in connection with covered contracts subject to the order from periods in which other work was performed, the Executive order minimum wage does not apply to hours spent on work not covered by the order. Accordingly, the proposed regulatory text at § 23.220(a) emphasized that contractors must pay covered workers performing on or in connection with a covered contract no less than the applicable Executive order minimum wage for hours worked on or in connection with the covered contract.

The Department received a number of comments regarding the coverage of workers under Executive Order 14026. Many of the comments, including those submitted by the AFL–CIO and CWA, NELP, and the SEIU, were strongly supportive of the broad coverage of workers articulated in the Executive order and the NPRM. The SEIU, for example, commended the Department's expansive proposed coverage of workers, noting that such an interpretation ''is necessary to ensure that contractors and subcontractors that conduct business with the federal government do not evade the Executive Order's requirements and thereby undercut the wage floor it is intended to establish.'' NELP observed that the Department's proposed interpretation of worker coverage ''recognizes that many work activities—not just those specifically mentioned in the contract—are integral to the performance of that contract, and that all individuals performing these work activities should be covered by the E.O.'' NELP further commended the definition because it ''makes clear that the federal government takes misidentifying employment status seriously and will look beyond an employer's labeling of workers as 'independent contractors' and make its own determination of whether such workers are covered.''

Although several commenters, including ABC, the Chamber, and Maximus, recognized that the proposed coverage of workers in this rule is identical to worker coverage under the regulations implementing Executive Order 13658, they argued that the standard for worker coverage will cause confusion and impose administrative burdens for the larger number of contractors affected by the wage increase associated with this rule. Such commenters expressed particular concern regarding the Department's proposed coverage of FLSA-covered workers performing on or in connection with DBA- and SCA-covered contracts. For example, ABC generally asserted that coverage of FLSA workers ''creates unnecessary confusion and imposes administrative burdens'' for DBA-covered contractors by creating new wage and recordkeeping obligations for workers who are not ''laborers and mechanics'' and therefore are not subject to the prevailing wage law, and who may not even be physically present on ''the site of the work.'' Several other commenters requested clarification as to whether workers in particular factual scenarios, including apprentices, would qualify as covered workers under the proposed definition.

As a threshold matter, the Department notes that Executive Order 14026 itself compels the conclusion that FLSA-covered workers performing on or in connection with DBA- and SCA-covered contracts are covered by the order. Section 1 of Executive Order 14026 explicitly states its applicability to ''workers working on or in connection with'' a covered contract. 86 FR 22835. Moreover, section 8(a) of the Executive order expressly extends its minimum wage requirements to all DBA- and SCA-covered contracts where ''the wages of workers under such contract . . . are governed by the Fair Labor Standards Act.'' In light of these clear directives, the Department believes that it reasonably and appropriately interpreted both the plain language and intent of Executive Order 14026 to cover FLSA-covered employees that provide support on a DBA- or SCA-covered contract who are not entitled to prevailing wage rates under those laws but whose wages are governed by the FLSA.

Moreover, as recognized by commenters both in support of and opposition to the proposed standard for worker coverage, the interpretation that the order applies to both workers performing ''on'' a covered contract as well as workers performing ''in connection with'' a covered contract is identical to the worker coverage interpretation set forth in the Department's regulations implementing Executive Order 13658, *see* 29 CFR 10.2. The Department believes that consistency between the two sets of regulations, where appropriate, will aid stakeholders in understanding their rights and obligations under Executive Order 14026, will enhance compliance assistance, and will minimize the potential for administrative burden on the part of contracting agencies and contractors. For those contractors currently subject to Executive Order 13658, Executive Order 14026 imposes no new administrative or recordkeeping requirements beyond what the contractor is already required to do under Executive Order 13658, including with respect to the identification of workers performing ''in connection with'' covered contracts and the segregation of hours worked on covered and non-covered contracts. For contractors not currently subject to Executive Order 13658, Executive Order 14026 imposes minimal burden because its recordkeeping requirements mirror those that already exist under the DBA, FLSA, and SCA. The Department's proposed recordkeeping requirements are discussed below in the preamble discussion of proposed § 23.260.

The potential for administrative burden is further mitigated by the exclusion for FLSA-covered workers performing in connection with covered contracts for less than 20 percent of their work hours in a given workweek set forth at § 23.40(f). The Department adopted this exclusion in its 2014 final rule implementing Executive Order 13658 based on contractor concerns regarding the administrative burden that could result from the breadth of worker coverage under that order. Consistent with the discussion in the NPRM implementing Executive Order 14026, the Department views this exclusion as a reasonable interpretation that ensures the broad coverage of workers performing on or in connection with covered contracts directed by Executive Order 14026 while also acknowledging the administrative challenges imposed by such broad coverage as expressed by contractors. That exclusion is discussed in greater detail below in the preamble discussion of proposed § 23.40(f).

The Department has carefully considered all relevant comments received regarding its proposed coverage of workers and, for the reasons explained below, has determined to finalize the worker coverage standard as proposed. The Department endeavors, however, to provide additional examples of workers performing both ''on'' and ''in connection with'' each of the four categories of covered contracts to assist stakeholders in understanding their rights and responsibilities under

the order. With respect to a DBA-covered contract for construction, the laborers and mechanics performing the construction work called for by the contract at the construction site are covered workers performing ''on'' the contract for purposes of this Executive order. The construction contractor's off-site fabrication shop workers would be regarded as performing work ''in connection with'' a covered contract to the extent their services are necessary to the performance of the contract. Similarly, a security guard patrolling or monitoring a construction worksite where DBA-covered work is being performed or a clerk who processes the payroll for DBA contracts (either on or off the site of the work) would be viewed as workers performing ''in connection with'' the covered contract under Executive Order 14026.

With respect to an SCA-covered contract, the service employees performing the services called for by the contract are covered workers performing ''on'' the contract for purposes of Executive Order 14026. An accounting clerk who processes invoices for SCA contracts or a human resources employee who hires the employees performing work on the SCA-covered contract would qualify as workers performing ''in connection with'' the SCA-covered contract.

With respect to concessions contracts and contracts in connection with Federal property or lands and related to offering services, the workers performing the specific services called for by the contract (*e.g.,* the workers operating the concessions stand at a national monument, the outfitters and guides leading the multi-day excursion in the national park, the employees working at the dry cleaning establishment in a federal building) are performing ''on'' the covered contract. Examples of covered workers performing ''in connection with'' the covered contract could include the clerk who handles the payroll for a dry cleaner that leases space in a Federal building or the administrative assistant who handles the billing and advertising for a multi-day excursion in a national park.

Workers Employed Under FLSA Section 14(c) Certificates

Executive Order 14026 expressly provides that its minimum wage protections extend to workers with disabilities whose wage rates are calculated pursuant to special certificates issued under section 14(c) of the FLSA. *See* 86 FR 22835. Consistent with the final rule implementing Executive Order 13658, *see* 79 FR 60662, the Department proposed to include language in the contract clause set forth in Appendix A explicitly stating that workers with disabilities whose wages are calculated pursuant to special certificates issued under section 14(c) of the FLSA must be paid at least the Executive Order 14026 minimum wage (or the applicable commensurate wage rate under the certificate, if such rate is higher than the Executive order minimum wage) for hours spent performing on or in connection with covered contracts. All workers performing on or in connection with covered contracts whose wages are governed by FLSA section 14(c), regardless of whether they are considered to be ''employees,'' ''clients,'' or ''consumers,'' are covered by the Executive order (unless the 20 percent of hours worked exclusion applies). Moreover, all of the Federal contractor requirements set forth in this proposed rule apply with equal force to contractors employing workers under FLSA section 14(c) certificates to perform work on or in connection with covered contracts.

The Department received several comments pertaining to the coverage of workers with disabilities whose wage rates are calculated pursuant to special certificates issued under section 14(c) of the FLSA. Many of the comments received, including those submitted by the Finger Lakes Independence Center, the National Industries for the Blind, the SEIU, and the Teamsters, supported the inclusion of workers employed under section 14(c) certificates in the scope of the order's coverage. Some commenters, such as SourceAmerica, stated that they supported the intent behind the Executive order but expressed concerns that the inclusion of workers employed under section 14(c) certificates could potentially lead to a loss of employment, a reduction in work hours, or the loss of public benefits for those workers. SourceAmerica suggested that, in order to mitigate these potential unintended consequences, the Department should increase the income thresholds for receipt of benefits under Social Security and Medicare and/or Medicaid or otherwise establish more flexibilities for such individuals who may depend upon the receipt of such benefits. SourceAmerica also recommended that the Department work with Congress to implement technical assistance and transitional funding programs to assist with the Executive Order 14026 minimum wage increase.

The Department appreciates the concerns raised regarding the potential loss or reduction of employment or reduction in public benefits that could result from requiring that the Executive Order 14026 minimum wage be paid to workers who are employed under an FLSA section 14(c) certificate and who are working on or in connection with covered contracts. The Department notes that many workers employed under a section 14(c) certificate performing on or in connection with covered contracts would be covered by Executive Order 13658 and its minimum wage requirement in the absence of Executive Order 14026. Thus, these workers are currently subject to an hourly minimum wage of at least $10.95 for such covered contract work, mitigating some of the impact of Executive Order 14026's $15.00 minimum wage. The Department appreciates the concerns raised regarding a potential loss of public benefits that could result from application of the Substantial Gainful Activity limit to workers with disabilities paid at the Executive order minimum wage. The Department lacks the authority to alter the criteria used by other federal, state, and local agencies in determining eligibility for public benefits. However, the Department does not expect that public benefit eligibility will be significantly impacted as a result of this rule, particularly given that many workers employed under section 14(c) certificates, as noted above, may already be performing on or in connection with contracts covered by Executive Order 13658.

Finally, the Department notes that a few commenters, such as the DC Department on Disability Services, more broadly call for the general prohibition on the issuance of all section 14(c) certificates under the FLSA. The Department appreciates and will carefully consider such feedback, but notes that such requests are beyond the scope of the Department's rulemaking authority to implement Executive Order 14026, which only applies to federal contract workers. The Department will, however, continue to provide technical assistance to stakeholders and, where appropriate, work with Congress and other federal partners to support the transition of workers with disabilities away from subminimum wage employment and towards competitive integrated employment.

Apprentices, Students, Interns, and Seasonal Workers

Consistent with the Department's final rule implementing Executive Order 13658, *see* 79 FR 60663, the Department's proposed rule explained that individuals who are employed on an SCA- or DBA-covered contract and individually registered in a bona fide

apprenticeship program registered with the Department's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship, are entitled to the Executive order minimum wage for the hours they spend working on or in connection with covered contracts.

The Department noted that the vast majority of apprentices employed by contractors on covered contracts will be individuals who are registered in a bona fide apprenticeship program registered with the Department's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship. Such apprentices are entitled to receive the full Executive order minimum wage for all hours worked on or in connection with a covered contract. The Executive order directs that the minimum wage applies to workers performing on or in connection with a covered contract whose wages are governed by the DBA and the SCA. Moreover, the Department stated its belief that the Federal Government's interests in economy and efficiency are best promoted by generally extending coverage of the order to apprentices performing covered contract work.

In the NPRM, the Department proposed that DBA- and SCA-covered apprentices are subject to the Executive order but that workers whose wages are governed by special subminimum wage certificates under FLSA sections 14(a) and (b) are excluded from the order (*i.e.,* FLSA-covered learners, apprentices, messengers, and full-time students). Consistent with the Department's final rule implementing Executive Order 13658, *see* 79 FR 60663–64, the Department proposed to interpret the plain language of the Executive order as excluding workers whose wages are governed by FLSA sections 14(a) and (b) subminimum wage certificates (*i.e.,* FLSA-covered apprentices, learners, messengers, and full-time students). The order expressly states that the minimum wage must ''be paid to workers employed in the performance of the contract or any covered subcontract thereunder, including workers whose wages are calculated pursuant to special certificates issued under section 14(c).'' 86 FR 22835. The Department explained its belief that, in interpreting whether a worker's wages are governed by the FLSA for purposes of determining coverage under Executive Order 14026, the Executive order's explicit inclusion of FLSA section 14(c) workers reflects an intent to omit from coverage workers whose wages are calculated pursuant to special certificates issued under FLSA sections 14(a) and (b).

The Department's proposed rule did not contain a general exclusion for seasonal workers or students. However, except with respect to workers who are otherwise covered by the SCA or the DBA, the proposed rule stated that part 23 does not apply to employees who are not entitled to the minimum wage set forth at 29 U.S.C. 206(a)(1) of the FLSA pursuant to 29 U.S.C. 213(a) and 214(a)–(b). Pursuant to this exclusion, the Executive order would not apply to full-time students whose wages are calculated pursuant to special certificates issued under section 14(b) of the FLSA, unless they are otherwise covered by the DBA or SCA. The exclusion would also apply to employees employed by certain seasonal and recreational establishments pursuant to 29 U.S.C. 213(a)(3).

The Department received a few comments expressing confusion or concern regarding the Department's proposed coverage of these specific types of workers. With respect to apprentices, ABC commented that ''[t]he NPRM's treatment of apprentice wages is particularly confusing and impactful on contractors.'' ABC urged the Department to exclude from coverage apprentices performing work on DBA or SCA contracts because such apprentice ''wages are tied to the journeyman rate on government contracts and there is no need for their wages to be affected by a new minimum wage.''

The Department has carefully considered ABC's request, but has decided to adopt its proposed interpretation that DBA- and SCA-covered apprentices are subject to Executive Order 14026. As a threshold matter, the Department notes that such apprentices are also covered by Executive Order 13658 and thus contracting agencies, contractors, and workers should already be familiar with this coverage principle. As explained in the NPRM, most apprentices employed by contractors on covered contracts will be individuals who are registered in a bona fide apprenticeship program registered with the Department's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship. Such apprentices are entitled to receive the full Executive Order 14026 minimum wage for all hours worked on or in connection with covered contracts. Executive Order 14026 directs that the minimum wage applies to workers performing on or in connection with a covered contract whose wages are governed by the DBA and the SCA; apprentices fall within this scope. Moreover, the Department believes that the Federal Government's interests in economy and efficiency are best promoted by extending coverage of the order to DBA- and SCA-covered apprentices.

To provide further clarification and to minimize stakeholder confusion, the Department notes that the only group of apprentices who are expressly excluded from coverage of Executive Order 14026 are workers whose wages are governed by special subminimum wage certificates under FLSA section 14(a). The Department notes that there are very few workers who fall within the scope of this exclusion. This conclusion is based on the plain language of Executive Order 14026, which expressly states that the minimum wage must be paid to workers performing on or in connection with covered contracts, ''including workers whose wages are calculated pursuant to special certificates issued under section 14(c) of the Fair Labor Standards Act of 1938'' but does not reference workers whose wages are governed by FLSA sections 14(a) and (b) subminimum wage certificates (*i.e.,* FLSA-covered apprentices, learners, messengers, and full-time students). Consistent with its interpretation of Executive Order 13658, the Department believes that the explicit inclusion of workers employed under FLSA section 14(c) certificates as within the scope of Executive Order 14026 reflects an intent to omit from coverage workers whose wages are calculated pursuant to special certificates issued under FLSA sections 14(a) and (b). This narrow exclusion is codified at § 23.40(e)(1)–(2) to help provide clarity to stakeholders.

With respect to other comments received regarding particular categories of workers, a few commenters requested that the Department clarify whether seasonal workers and students, particularly in the outdoor recreational industries, are covered by the Executive order and this part. SBA Advocacy noted that its members found this discussion in the NPRM to be particularly confusing.

In response to these comments, the Department clarifies that workers who are covered by the DBA or SCA are subject to Executive Order 14026, regardless of whether they are students or seasonal workers. However, if a worker is not subject to the DBA or SCA and is exempt from the FLSA's minimum wage protections pursuant to 29 U.S.C. 213(a) or 214(a)–(b), that

worker is exempt from coverage of Executive Order 14026. This interpretation is set forth in the regulatory text at § 23.40(e). Pursuant to this exclusion, Executive Order 14026 does not apply to full-time students whose wages are calculated pursuant to special certificates issued under FLSA section 14(b), unless they are otherwise covered by the DBA or SCA. Employees employed by establishments that qualify as ''an amusement or recreational establishment, organized camp, or religious or non-profit educational conference center'' and meet the criteria for exemption set forth at 29 U.S.C. 213(a)(3) are also exempt from Executive Order 14026, unless such workers are otherwise covered by the DBA or SCA.

Because the Department does not know the specific relevant facts regarding the employment of particular seasonal workers and students employed by the small businesses mentioned in the above comments, the Department cannot determine whether such workers would be covered by the order. The Department encourages such commenters to contact the WHD as necessary for compliance assistance in determining their rights and responsibilities under the Executive order and the FLSA. Insofar as the commenters are seeking an exclusion of particular seasonal workers and students employed by small businesses because of an alleged financial hardship that would result from application of the Executive order, the Department disagrees with these assertions and finds that they are insufficiently persuasive or unique to warrant creation of a broad exclusion for all seasonal workers or students. Such assertions of economic hardship fail to account for the economy and efficiency benefits that the Department expects contractors will realize by paying their workers, including students and seasonal workers, the Executive order minimum wage rate. The Department further notes that most contractors should already be familiar with the proposed general worker coverage standard under Executive Order 14026, including this discussion of students and seasonal workers, because it is identical to the worker coverage standard under Executive Order 13658.

Geographic Scope

Finally, proposed § 23.30(c) provided that the Executive order and part 23 apply to contracts with the Federal Government requiring performance in whole or in part within the United States, which as defined in proposed § 23.20 would mean, when used in a geographic sense, the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf lands as defined in the Outer Continental Shelf Lands Act, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, Wake Island, and Johnston Island. Under this approach, the minimum wage requirements of the Executive order and part 23 would not apply to contracts with the Federal Government to be performed in their entirety outside the geographical limits of the United States as thus defined. However, if a contract with the Federal Government is to be performed in part within and in part outside these geographical limits and is otherwise covered by the Executive order and part 23, the minimum wage requirements of the order and part 23 would apply with respect to that part of the contract that is performed within these geographical limits.

As explained above in the discussion of the proposed definition of *United States,* the geographic scope of Executive Order 14026 and part 23 is more expansive than the regulations implementing Executive Order 13658, which only applied to contracts performed in the 50 States and the District of Columbia. However, as noted above, each of the territories listed above is covered by both the SCA, *see* 29 CFR 4.112(a), and the FLSA. *See, e.g.,* 29 U.S.C. 213(f), 29 CFR 776.7; Fair Minimum Wage Act of 2007, Public Law 110–28, 121 Stat. 112 (2007). Contractors operating in those territories will therefore generally have familiarity with many of the requirements set forth in part 23 based on their coverage by the SCA and/or the FLSA.

As discussed in the context of the Department's proposed definition of *United States* above, the Department received a number of comments regarding its proposed interpretation that workers performing on or in connection with covered contracts in the specified U.S. territories are covered by Executive Order 14026. The vast majority of such comments voiced strong support for the Department's interpretation that Executive Order 14026 apply to covered contracts being performed in Puerto Rico, the Virgin Islands, Outer Continental Shelf lands as defined in the Outer Continental Shelf Lands Act, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, Wake Island, and Johnston Island. A wide variety of stakeholders expressed their agreement with this proposed geographic scope, including numerous elected officials, such as the Governor of Guam and several legislators from Puerto Rico and Guam; labor organizations, including the Labor Council for Latin American Advancement, AFL–CIO, the AFSCME, the Union de Profesionales de la Seguridad Privada de Puerto Rico, and the Teamsters; and other interested organizations, including One Fair Wage, Oxfam, ROC United; and the Leadership Conference on Civil and Human Rights. Several of these commenters expressed their concurrence that expansion of coverage to the enumerated U.S. territories will promote economy and efficiency in Federal Government procurement. For example, the Governor of Guam affirmed ''that extending the E.O. 14026 minimum wage to workers performing contracts in Guam would promote the federal government's procurement interests in economy and efficiency'' and ''E.O. 14026's application to Guam will improve the morale and quality of life of 11,800 employees in Guam, Puerto Rico, and the U.S. Virgin Islands, who are laborers, nursing assistants, and foodservice and maintenance workers.'' Several legislators in Puerto Rico expressed similar support for the expansion of coverage to workers in Puerto Rico. NELP also commended the Department's proposed interpretation to cover contract work performed in the specified U.S. territories, commenting that ''[j]ust as higher wages will result in lower turnover and higher productivity in the 50 US States, so too will economy and efficiency improve for contracts performed in these areas with the $15 minimum wage.''

As discussed above in the proposed definition of *United States,* a few commenters, such as Conduent and the Center for Workplace Compliance, expressed concern with the Department's proposed interpretation that Executive Order 14026 applies to workers performing on or in connection with covered contracts in the enumerated U.S. territories. Such commenters generally asserted that the proposed coverage of the territories is not compelled by the text of Executive Order 14026 itself and could cause financial disruptions, including by adversely affecting private industry, in the territories unless the Executive Order minimum wage rate is phased in over a number of years. Due to its concern that the NPRM's ''expanded geographic scope may have unintended consequences given the fact that E.O. 13658 did not apply in these jurisdictions and the increase in minimum wage may be significant,'' the Center for Workplace Compliance encouraged the Department ''to carefully monitor implementation of the

E.O. as it applies to jurisdictions outside of the fifty states and the District of Columbia and take a flexible approach with covered contractors through the exercise of enforcement discretion should significant unintended consequences occur.''

The Department appreciates all of the feedback submitted regarding the proposed geographic scope of Executive Order 14026 and this rule. After careful review, the Department adopts its interpretation proposed in the NPRM that the Executive order applies to work performed on or in connection with covered contracts in the specified U.S. territories. Although it is true that the text of Executive Order 14026 does not compel the determination that the order has such geographic reach, the Department has exercised its delegated discretion to select a definition of *United States,* and corresponding geographic scope, that tracks the SCA and FLSA, as explained in the NPRM. As outlined in the NPRM and reflected in the final regulatory impact analysis in this final rule, the Department has further analyzed this issue since its Executive Order 13658 rulemaking in 2014 and consequently determined that the Federal Government's procurement interests in economy and efficiency would be promoted by expanding the geographic scope of Executive Order 14026. The vast majority of public comments received on this issue support this determination, including perhaps most notably a wide variety of stakeholders located in the U.S. territories themselves.

With respect to the comments expressing concern regarding potential unintended consequences of such coverage in the U.S. territories, the Department appreciates such feedback and certainly intends to monitor the effects of this rule. However, such comments did not provide compelling qualitative or quantitive evidence for the assertions that application of the order to the U.S. territories will result in economic or other disruptions. As previously discussed, the Department further views requests for a gradual phase-in of the Executive Order 14026 minimum wage rate as beyond the purview of the Department in this rulemaking. The Department therefore adopts the proposed geographic scope of Executive Order 14026 as set forth in the NPRM.

Section 23.40 Exclusions

Proposed § 23.40 addressed and implemented the exclusionary provisions expressly set forth in section 8(c) of Executive Order 14026 and provided other limited exclusions to coverage as authorized by section 4(a) of the Executive order. *See* 86 FR 22836–37. Specifically, proposed § 23.40(a) through (d) and (g) set forth the limited categories of contractual arrangements for services or construction that would be excluded from the minimum wage requirements of the Executive order and part 23, while proposed § 23.40(e) and (f) established narrow categories of workers that would be excluded from coverage of the order and part 23. The Center for Workplace Compliance expressed its general support for the Department's proposed exclusions at § 23.40(a)–(f) because such exclusions are consistent with those that are codified in the regulations implementing Executive Order 13658 at 29 CFR 10.4(a)–(f). Maximus expressed its view that exclusions generally should be limited so that the Executive order impacts the greatest number of workers. Each of these exclusions, as well as any specific comments received on the exclusions, are discussed below.

Exclusion of grants: Proposed § 23.40(a) implemented section 8(c) of Executive Order 14026, which states that the order does not apply to ''grants.'' 86 FR 22837. Consistent with the regulations implementing Executive Order 13658, *see* 29 CFR 10.4(a), the Department interpreted this provision to mean that the minimum wage requirements of the Executive order and part 23 do not apply to grants, as that term is used in the Federal Grant and Cooperative Agreement Act, 31 U.S.C. 6301 *et seq.* That statute defines a ''grant agreement'' as ''the legal instrument reflecting a relationship between the United States Government and a State, a local government, or other recipient'' when two conditions are satisfied. 31 U.S.C. 6304. First, ''the principal purpose of the relationship is to transfer a thing of value to the state or local government or other recipient to carry out a public purpose of support or stimulation authorized by a law of the United States instead of acquiring (by purchase, lease, or barter) property or services for the direct benefit or use of the United States Government.'' *Id.* Second, ''substantial involvement is not expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement.'' *Id.* Section 2.101 of the FAR similarly excludes ''grants,'' as defined in the Federal Grant and Cooperative Agreement Act, from its coverage of contracts. 48 CFR 2.101. Several appellate courts have similarly adopted this construction of ''grants'' in defining the term for purposes of other Federal statutory schemes. *See, e.g., Chem. Service, Inc.* v. *Environmental Monitoring Systems Laboratory,* 12 F.3d 1256, 1258 (3d Cir. 1993) (applying same definition of ''grants'' for purposes of 15 U.S.C. 3710a); *East Arkansas Legal Services* v. *Legal Services Corp.,* 742 F.2d 1472, 1478 (D.C. Cir. 1984) (applying same definition of ''grants'' in interpreting 42 U.S.C. 2996a). If a contract qualifies as a grant within the meaning of the Federal Grant and Cooperative Agreement Act, it would thereby be excluded from coverage of Executive Order 14026 and part 23 pursuant to the proposed rule.

The Cline Williams Law Firm requested that the Department clarify that Executive Order 14026 does not apply to grants and that, specifically, the Executive order does not apply to grants received by Federally Qualified Health Centers (FQHCs) under Section 330 of the Public Health Services Act (PHSA). In response to this comment, the Department confirms that the Executive order does not apply to grants as defined in the Federal Grant and Cooperative Agreement Act, 31 U.S.C. 6301 *et seq.* The Department further reiterates that the mere receipt of federal financial assistance by an individual or entity does not render an agreement subject to the Executive order. Based on the comment received, the Department currently lacks sufficient information about the particular grants to FQHCs under Section 330 of the PHSA to be able to definitively determine whether such grants would be excluded from coverage of the Executive order. The Department invites the commenter, and other stakeholders with similar questions, to follow the procedures set forth at § 23.580 to obtain a ruling of the Administrator regarding the potential exclusion of such grants if needed.

The Department did not receive other comments regarding this proposed exclusion and therefore finalizes it as proposed.

Exclusion of contracts or agreements with Indian Tribes: Proposed § 23.40(b) implemented the other exclusion set forth in section 8(c) of Executive Order 14026, which states that the order does not apply to ''contracts, contract-like instruments, or agreements with Indian Tribes under the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638), as amended.'' 86 FR 22837. The Department did not receive any comments on this provision; accordingly, it is adopted as set forth in the NPRM.

The remaining exclusionary provisions of the rule are derived from the authority granted to the Secretary

pursuant to section 4(a) of the Executive order to ''include . . . as appropriate, exclusions from the requirements of this order'' in implementing regulations. 86 FR 22836. In issuing such regulations, the Executive order instructs the Secretary to ''incorporate existing definitions'' under the FLSA, SCA, DBA, and Executive Order 13658 ''to the extent practicable.'' *Id.* Accordingly, the exclusions discussed below incorporate existing applicable statutory and regulatory exclusions and exemptions set forth in the FLSA, SCA, DBA, and Executive Order 13658.

Exclusion for procurement contracts for construction that are excluded from DBA coverage: As discussed in the coverage section above, the Department proposed to interpret section 8(a)(i)(A) of the Executive order, which states that the order applies to ''procurement contract[s]'' for ''construction,'' 86 FR 22837, as referring to any contract covered by the DBA, as amended, and its implementing regulations. *See* proposed § 23.30(a)(1)(i). In order to provide further definitional clarity to the regulated community for purposes of proposed § 23.30(a)(1)(i), and consistent with the regulations implementing Executive Order 13658, the Department thus established in proposed § 23.40(c) that any procurement contracts for construction that are not subject to the DBA are similarly excluded from coverage of the Executive order and part 23. For example, a prime procurement contract for construction valued at less than $2,000 would not be covered by the DBA and thus is not covered by Executive Order 14026 and part 23. To assist all interested parties in understanding their rights and obligations under Executive Order 14026, the Department proposed to make coverage of construction contracts under Executive Order 14026 and part 23 consistent with coverage under the DBA and Executive Order 13658 to the greatest extent possible.

The Department did not receive comments about this proposed exclusion and thus adopts it as set forth in the NPRM.

Exclusion for contracts for services that are exempted from SCA coverage: Similarly, the Department proposed to implement the coverage provisions set forth in sections 8(a)(i)(A) and (B) of the Executive order, which state that the order applies respectively to a ''procurement contract . . . for services'' and a ''contract or contract-like instrument for services covered by the Service Contract Act,'' 86 FR 22837, by providing that the requirements of the order apply to all service contracts covered by the SCA. *See* proposed § 23.30(a)(1)(ii). Proposed § 23.40(d) provided additional clarification by incorporating, where appropriate, the SCA's exclusion of certain service contracts into the exclusionary provisions of the Executive order. This proposed provision would exclude from coverage of the Executive order and part 23 any contracts for services, except for those expressly covered by proposed § 23.30(a)(1)(ii)–(iv), that are exempted from coverage under the SCA. The SCA specifically exempts from coverage seven types of contracts (or work) that might otherwise be subject to its requirements. *See* 41 U.S.C. 6702(b). Pursuant to this statutory provision, the SCA expressly does not apply to (1) a contract of the Federal Government or the District of Columbia for the construction, alteration, or repair, including painting and decorating, of public buildings or public works; (2) any work required to be done in accordance with chapter 65 of title 41; (3) a contract for the carriage of freight or personnel by vessel, airplane, bus, truck, express, railway line or oil or gas pipeline where published tariff rates are in effect; (4) a contract for the furnishing of services by radio, telephone, telegraph, or cable companies, subject to the Communications Act of 1934, 47 U.S.C. 151 *et seq.;* (5) a contract for public utility services, including electric light and power, water, steam, and gas; (6) an employment contract providing for direct services to a Federal agency by an individual; or (7) a contract with the United States Postal Service, the principal purpose of which is the operation of postal contract stations. *Id.; see* 29 CFR 4.115–4.122; WHD FOH ¶ 14c00.

The SCA also authorizes the Secretary to ''provide reasonable limitations'' and to prescribe regulations allowing reasonable variation, tolerances, and exemptions with respect to the chapter but only in special circumstances where the Secretary determines that the limitation, variation, tolerance, or exemption is necessary and proper in the public interest or to avoid the serious impairment of Federal Government business, and is in accord with the remedial purpose of the chapter to protect prevailing labor standards. 41 U.S.C. 6707(b); *see* 29 CFR 4.123. Pursuant to this authority, the Secretary has exempted a specific list of contracts from SCA coverage to the extent regulatory criteria for exclusion from coverage are satisfied as provided at 29 CFR 4.123(d) and (e). To assist all interested parties in understanding their rights and obligations under Executive Order 14026, the Department proposed to make coverage of service contracts under the Executive order and part 23 consistent with coverage under the SCA to the greatest extent possible.

Therefore, the Department provided in proposed § 23.40(d) that contracts for services that are exempt from SCA coverage pursuant to its statutory language or implementing regulations would not be subject to part 23 unless expressly included by proposed § 23.30(a)(1)(ii)–(iv). For example, the SCA exempts contracts for public utility services, including electric light and power, water, steam, and gas, from its coverage. *See* 41 U.S.C. 6702(b)(5); 29 CFR 4.120. Such contracts would also be excluded from coverage of the Executive order and part 23 under the proposed rule. Similarly, certain contracts principally for the maintenance, calibration, or repair of automated data processing equipment and office information/word processing systems are exempted from SCA coverage pursuant to the SCA's implementing regulations at 29 CFR 4.123(e)(1)(i)(A); such contracts would thus not be covered by the Executive order or the proposed rule. However, certain types of concessions contracts are excluded from SCA coverage pursuant to 29 CFR 4.133(b) but are explicitly covered by the Executive order and part 23 under proposed § 23.30(a)(1)(iii). 86 FR 22837. Moreover, to the extent that a contract is excluded from SCA coverage but subject to the DBA (*e.g.,* a contract with the Federal Government for the construction, alteration, or repair, including painting and decorating, of public buildings or public works that would be excluded from the SCA under 41 U.S.C. 6702(b)(1)), such a contract would be covered by the Executive order and part 23 as a ''procurement contract'' for ''construction.'' 86 FR 22837; proposed § 23.30(a)(1)(i). In sum, all of the SCA's exemptions are applicable to the Executive order, unless such SCA-exempted contracts are otherwise covered by the Executive order and the proposed rule (*e.g.,* they qualify as concessions contracts or contracts in connection with Federal land and related to offering services). The Department noted that subregulatory and other coverage determinations made by the Department for purposes of the SCA would also govern whether a contract is covered by the SCA for purposes of the Executive order. This proposed exclusion was identical to that adopted in the regulations implementing Executive Order 13658. *See* 29 CFR 10.4(d).

Although no commenters objected to this proposed exclusion, a few commenters, including the AFL–CIO and CWA, the SEIU, and the Teamsters, urged the Department to clarify the limited scope of SCA's statutory exemptions under 41 U.S.C. 6702(b)(3)–(5). The Department appreciates the feedback from these commenters, but declines to further elaborate on the scope of the SCA's statutory exemptions in this rulemaking. Subregulatory and other coverage determinations made by the Department for purposes of the SCA will govern whether a contract is covered by the SCA for purposes of the Executive order; however, such coverage determinations are independent of this Executive order and would be more appropriately addressed in an official ruling or interpretation under the SCA or in subregulatory guidance issued pursuant to that statute. Because the Department did not receive any other comments about this proposed exclusion, it is adopted as proposed.

Exclusion for employees who are exempt from the minimum wage requirements of the FLSA under 29 U.S.C. 213(a) and 214(a)–(b): Consistent with the regulations implementing Executive Order 13658, the Department proposed to provide in § 23.40(e) that, except for workers whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(c) and workers who are otherwise covered by the SCA or DBA, employees who are exempt from the minimum wage protections of the FLSA under 29 U.S.C. 213(a) would similarly not be subject to the minimum wage protections of Executive Order 14026 and part 23. Proposed § 23.40(e)(1) through (3), which are discussed briefly below, highlighted some of the narrow categories of employees that are not entitled to the minimum wage protections of the order and part 23 pursuant to this exclusion.

Proposed § 23.40(e)(1) and (2) specifically would exclude from the requirements of Executive Order 14026 and part 23 workers whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(a) and (b). Specifically, proposed § 23.40(e)(1) would exclude from coverage learners, apprentices, or messengers employed under special certificates pursuant to 29 U.S.C. 214(a). *Id.; see* 29 CFR part 520. Proposed § 23.40(e)(2) also would exclude from coverage full-time students employed under special certificates issued under 29 U.S.C. 214(b). *Id.; see* 29 CFR part 519. Proposed § 23.40(e)(3) provided that the Executive order and part 23 would not apply to individuals employed in a bona fide executive, administrative, or professional capacity, as those terms are defined and delimited in 29 CFR part 541. As the Department explained in the NPRM, this proposed exclusion is consistent with the regulations for Executive Order 13658, *see* 29 CFR 10.4(e), as well as with the FLSA, SCA, and DBA and their implementing regulations. *See, e.g.,* 29 U.S.C. 213(a)(1) (FLSA); 41 U.S.C. 6701(3)(C) (SCA); 29 CFR 5.2(m) (DBA).

Maximus expressed its support for the Department's proposed exclusion of individuals employed in executive roles as ''necessary and uncontroversial.'' As discussed above in the preamble section regarding coverage of apprentices, students, interns, and seasonal workers, the Department received a few requests for clarification regarding the potential exclusion of such workers and has addressed those comments above. Because the Department did not receive any comments requesting specific revisions to proposed § 23.40(e), the Department adopts the provision as proposed.

Exclusion for FLSA-covered workers performing in connection with covered contracts for less than 20 percent of their work hours in a given workweek: As discussed earlier in the context of the ''on or in connection with'' standard for worker coverage, proposed § 23.40(f) established an explicit exclusion for FLSA-covered workers performing ''in connection with'' covered contracts for less than 20 percent of their hours worked in a given workweek.

This proposed exclusion is identical to the exclusion that appears in the Department's regulations implementing Executive Order 13658. *See* 29 CFR 10.4(f). As the Department explained in the final rule for those regulations, *see* 79 FR 60660, the Department has used a 20 percent threshold for coverage determinations in a variety of SCA and DBA contexts. For example, 29 CFR 4.123(e)(2) exempts from SCA coverage contracts for seven types of commercial services, such as financial services involving the issuance and servicing of cards (including credit cards, debit cards, purchase cards, smart cards, and similar card services), contracts with hotels for conferences, transportation by common carriers of persons by air, real estate services, and relocation services. Certain criteria must be satisfied for the exemption to apply to a contract, including that each service employee spend only ''a small portion of his or her time'' servicing the contract. 29 CFR 4.123(e)(2)(ii)(D). The exemption defines ''small portion'' in relative terms and as ''less than 20 percent'' of the employee's available time. *Id.* Likewise, the Department has determined that the DBA applies to certain categories of workers (*i.e.,* air balance engineers, employees of traffic service companies, material suppliers, and repair employees) only if they spend 20 percent or more of their hours worked in a workweek performing laborer or mechanic duties on the covered site. *See* WHD FOH ¶¶ 15e06, 15e10(b), 15e16(c), and 15e19.

In light of the exclusion that was adopted in the Department's regulations implementing Executive Order 13658, as well as the above-discussed administrative practice under the SCA and the DBA of applying a 20 percent threshold to certain coverage determinations, the Department proposed an exclusion in § 23.40(f) whereby any covered worker performing only ''in connection with'' covered contracts for less than 20 percent of his or her hours worked in a given workweek will not be entitled to the Executive Order 14026 minimum wage for any hours worked.

As explained in the NPRM, this proposed exclusion would not apply to any worker performing ''on'' a covered contract whose wages are governed by the FLSA, SCA, or DBA. Such workers will be entitled to the Executive Order 14026 minimum wage for all hours worked performing on or in connection with covered contracts. However, for a worker solely performing ''in connection with'' a covered contract, the Executive Order 14026 minimum wage requirements would only apply if that worker spends 20 percent or more of his or her hours worked in a given workweek performing in connection with covered contracts. Thus, in order to apply this exclusion correctly, contractors must accurately distinguish between workers performing ''on'' a covered contract and those workers performing ''in connection with'' a covered contract based on the guidance provided in this section. The 20 percent of hours worked exclusion would not apply to any worker who spends any hours performing ''on'' a covered contract; rather, it would apply only to workers performing ''in connection with'' a covered contract who do not spend any hours worked performing ''on'' the contract in a given workweek.

For purposes of administering the 20 percent of hours worked exclusion under the Executive order, the Department views workers performing ''on'' a covered contract as those workers directly performing the specific services called for by the contract. Whether a worker is performing ''on'' a covered contract will be determined in

part by the scope of work or a similar statement set forth in the covered contract that identifies the work (*e.g.,* the services or construction) to be performed under the contract. Specifically, consistent with the SCA, *see, e.g.,* 29 CFR 4.153, a worker will be considered to be performing ''on'' a covered contract if the employee is directly engaged in the performance of specified contract services or construction. All laborers and mechanics engaged in the construction of a public building or public work on the site of the work thus will be regarded as performing ''on'' a DBA-covered contract. All service employees performing the specific services called for by an SCA-covered contract will also be regarded as performing ''on'' a contract covered by the Executive order. In other words, any worker who is entitled to be paid DBA or SCA prevailing wages is entitled to receive the Executive Order 14026 minimum wage for all hours worked on covered contracts, regardless of whether such covered work constitutes less than 20 percent of his or her overall hours worked in a particular workweek. For purposes of concessions contracts and contracts in connection with Federal property and related to offering services that are not covered by the SCA, the Department would regard any employee performing the specific services called for by the contract as performing ''on'' the covered contract in the same manner described above. Such workers would therefore be entitled to receive the Executive Order 14026 minimum wage for all hours worked on covered contracts, even if such time represents less than 20 percent of his or her overall work hours in a particular workweek.

However, for purposes of the Executive order, the Department would view any worker who performs solely ''in connection with'' covered contracts for less than 20 percent of his or her hours worked in a given workweek to be excluded from the order and part 23. In other words, such workers would not be entitled to be paid the Executive order minimum wage for any hours that they spend performing in connection with a covered contract if such time represents less than 20 percent of their hours worked in a given workweek. For purposes of this proposed exclusion, the Department would regard a worker performing ''in connection with'' a covered contract as any worker who is performing work activities that are necessary to the performance of a covered contract but who are not directly engaged in performing the specific services called for by the contract itself.

Therefore, and as explained in the NPRM, the 20 percent of hours worked exclusion may apply to any FLSA-covered employees who are not directly engaged in performing the specific construction identified in a DBA contract (*i.e.,* they are not DBA-covered laborers or mechanics) but whose services are necessary to the performance of the DBA contract. In other words, workers who may fall within the scope of this exclusion are FLSA-covered workers who do not perform the construction identified in the DBA contract either due to the nature of their non-physical duties and/or because they are not present on the site of the work, but whose duties would be regarded as essential for the performance of the contract.

In the context of DBA-covered contracts, workers who may qualify for this exclusion if they spend less than 20 percent of their hours worked performing work in connection with covered contracts could include an FLSA-covered security guard patrolling or monitoring several construction sites, including one where DBA-covered work is being performed, or an FLSA-covered clerk who processes the payroll for DBA contracts (either on or off the site of the work). However, if the security guard or clerk in these examples also performed the duties of a DBA-covered laborer or mechanic (for example, by painting or moving construction materials), the 20 percent of hours worked exclusion would not apply to any hours worked on or in connection with the contract because that worker performed ''on'' the covered contract at some point in the workweek. Similarly, if the security guard or clerk in these examples spent more than 20 percent of their time in a workweek performing in connection with DBA- or SCA-covered contracts (*e.g.,* the security guard exclusively patrolled a DBA-covered construction site), such workers would be covered by the Executive order and the exclusion would not apply.

In the proposed rule, the Department also reaffirmed that the protections of the order do not extend to workers who are not engaged in working on or in connection with a covered contract. For example, an FLSA-covered technician who is hired to repair a DBA contractor's electronic time system or an FLSA-covered janitor who is hired to clean the bathrooms at the DBA contractor's company headquarters are not covered by the order because they are not performing the specific duties called for by the contract or other services or work necessary to the performance of the contract.

In the context of SCA-covered contracts, the 20 percent of hours worked exclusion may apply to any FLSA-covered employees performing in connection with an SCA contract who are not directly engaged in performing the specific services identified in the contract (*i.e.,* they are not ''service employees'' entitled to SCA prevailing wages) but whose services are necessary to the performance of the SCA contract. Any workers performing work in connection with an SCA contract who are not entitled to SCA prevailing wages but are entitled to at least the FLSA minimum wage pursuant to 41 U.S.C. 6704(a) would fall within the scope of this exclusion.

Examples of workers in the SCA context who may qualify for this exclusion if they perform in connection with covered contracts for less than 20 percent of their hours worked in a given workweek include an accounting clerk who processes a few invoices for SCA contracts out of thousands of other invoices for non-covered contracts during the workweek or an FLSA-covered human resources employee who assists for short periods of time in benefits enrollment of the workers performing on the SCA-covered contract in addition to benefits enrollment of workers on other non-covered projects. Neither the Executive order nor the exclusion would apply, however, to an FLSA-covered landscaper at the office of an SCA contractor because that worker is not performing the specific duties called for by the SCA contract or other services or work necessary to the performance of the contract.

With respect to concessions contracts and contracts in connection with Federal property or lands and related to offering services, the 20 percent of hours worked exclusion may apply to any FLSA-covered employees performing work in connection with such contracts who are not at any time directly engaged in performing the specific services identified in the contract but whose services or work duties are necessary to the performance of the covered contract. One example of a worker who may qualify for this exclusion if the worker performed work in connection with covered contracts for less than 20 percent of his or her hours in a given workweek includes an FLSA-covered clerk who handles the payroll for a fitness center that leases space in a Federal agency building as well as the center's other locations that are not covered by the Executive order. Another such example of a worker who may qualify for this exclusion if the worker

performed work in connection with covered contracts for less than 20 percent of his or her hours worked in a given workweek would be a job coach whose wages are governed by the FLSA who assists workers employed under section 14(c) certificates in performing work at a fast food franchise located on a military base as well as that franchisee's other restaurant locations off the base. Neither the Executive order nor the exclusion would apply, however, to an FLSA-covered employee hired by a covered concessionaire to redesign the storefront sign for a snack shop in a national park unless the redesign of the sign was called for by the SCA contract itself or otherwise necessary to the performance of the contract.

As explained above, pursuant to this proposed exclusion, if a covered worker performs work ''in connection with'' contracts covered by the Executive order as well as on other work that is not within the scope of the order during a particular workweek, the Executive Order 14026 minimum wage would not apply for any hours worked if the number of the individual's work hours spent performing in connection with the covered contract is less than 20 percent of that worker's total hours worked in that workweek. Importantly, however, this rule is only applicable if the contractor has correctly determined the hours worked and if it appears from the contractor's properly kept records or other affirmative proof that the contractor appropriately segregated the hours worked in connection with the covered contract from other work not subject to the Executive order for that worker. *See, e.g.,* 29 CFR 4.169, 4.179. As discussed in greater detail in the preamble pertaining to rate of pay and recordkeeping requirements in §§ 23.220 and 23.260, if a covered contractor during any workweek is not exclusively engaged in performing covered contracts, or if while so engaged it has workers who spend a portion but not all of their hours worked in the workweek in performing work on or in connection with such contracts, it is necessary for the contractor to identify accurately in its records, or by other means, those periods in each such workweek when the contractor and each such worker performed work on or in connection with such contracts. *See* 29 CFR 4.179.

The Department noted in the proposed rule that, in the absence of records adequately segregating non-covered work from the work performed on or in connection with a covered contract, all workers working in the establishment or department where such covered work is performed will be presumed to have worked on or in connection with the contract during the period of its performance, unless affirmative proof establishing the contrary is presented. Similarly, in the absence of such records, a worker performing any work on or in connection with the contract in a workweek shall be presumed to have continued to perform such work for all hours worked throughout the workweek, unless affirmative proof establishing the contrary is presented. *Id.*

The quantum of affirmative proof necessary to adequately segregate non-covered work from the work performed on or in connection with a covered contract—or to establish, for example, that all of a worker's time associated with a contract was spent performing ''in connection with'' rather than ''on'' the contract—will vary with the circumstances. For example, it may require considerably less affirmative proof to satisfy the 20 percent of hours worked exclusion with respect to an FLSA-covered accounting clerk who only occasionally processes an SCA-contract-related invoice than would be necessary to establish the 20 percent of hours worked exclusion with respect to a security guard who works on a DBA-covered site at least several hours each week.

Finally, the Department noted in the NPRM that in calculating hours worked by a particular worker in connection with covered contracts for purposes of determining whether this exclusion may apply, contractors must determine the aggregate amount of hours worked on or in connection with covered contracts in a given workweek by that worker. For example, if an FLSA-covered administrative assistant works 40 hours per week and spends two hours each week handling payroll for each of four separate SCA contracts, the eight hours that the worker spends performing in connection with the four covered contracts must be aggregated for that workweek in order to determine whether the 20 percent of hours worked exclusion applies; in this example, the worker would be entitled to the Executive order minimum wage for all eight hours worked in connection with the SCA contracts because such work constitutes 20 percent of her total hours worked for that workweek.

The Department received some comments pertaining to this proposed exclusion. The Center for Workplace Compliance expressed its particular support for the provision because it is consistent with the exclusion that was set forth in the regulations implementing Executive Order 13658. A few commenters requested general clarification regarding the Department's proposed coverage of FLSA-covered employees performing on or in connection with covered contracts, which the Department has addressed in the preamble discussion of worker coverage above. In its comment, Conduent requested clarity with respect to this exclusion and provided a hypothetical for the Department to address. Conduent stated its belief that, if an FLSA-covered worker performed work ''in connection with'' four contracts in a given week, only one of which is a federal contract, then they must be paid the Executive Order 14026 minimum wage for work performed on all four contracts, even if three of the contracts are not covered by the order; Conduent then further elaborated on this hypothetical based on this assumption. However, the Department clarifies that the basic assumption made by Conduent is incorrect. As explained in the NPRM, workers are only required to be paid the Executive Order 14026 wage rate for hours that they spend performing on or in connection with a covered contract, assuming that the contractor has appropriately satisfied this rule's recordkeeping and segregation requirements. In the hypothetical presented by Conduent, the worker would not be entitled to the Executive order minimum wage rate for any of the time spent working on the three non-covered contracts. The worker would be entitled to receive the Executive order minimum wage for time spent performing work in connection with the one covered contract, but only if such time represented 20 percent or more of his or her hours worked in a given workweek.

For example, an FLSA-covered worker processes payroll and handles invoices for a construction contractor; each week, that worker performs work pertaining to one DBA-covered contract for that contractor and three non-federal contracts. In Week 1, the worker works 40 hours for the contractor, 10 hours of which are spent processing payroll and handling the billing in connection with the DBA-covered contract. In that week, the worker is required to be paid at least the Executive Order 14026 wage rate for 10 hours that week (the ''20 percent exclusion'' does not apply because 25 percent of the worker's hours worked that week were spent performing in connection with the covered contract). In Week 2, the worker works 40 hours for the contractor, only 4 of which are spent processing payroll and handling the billing for the DBA-covered contract.

In that week, the worker is not required to be paid the Executive order minimum wage for any hours worked because the worker only performed in connection with a covered contract for 10 percent of her hours worked in the workweek and the exclusion would apply.

The Department hopes that these examples further provide clarity about the applicability of the exclusion. Because the Department did not receive any comments requesting specific changes to the proposed exclusion, it is adopted as set forth in the NPRM.

Exclusion for contracts that result from a solicitation issued before January 30, 2022 and that are entered into on or between January 30, 2022 and March 30, 2022: Section 9(b) of Executive Order 14026 provides that as an ''exception'' to the general coverage of new contracts, where agencies have issued a solicitation before January 30, 2022, and entered into a new contract resulting from such solicitation within 60 days of such date, such agencies are strongly encouraged but not required to ensure that the Executive Order 14026 minimum wage rates are paid under the new contract. 86 FR 22837–38. The order further provides, however, that if such contract is subsequently extended or renewed, or an option is subsequently exercised under that contract, the Executive order 14026 minimum wage requirements will apply to that extension, renewal, or option. 86 FR 22838. Accordingly, the Department proposed to insert at § 23.40(g) an exclusion providing that part 23 does not apply to contracts that result from a solicitation issued prior to January 30, 2022, and that are entered into on or between January 30, 2022 and March 30, 2022. For stakeholder clarity, and consistent with section 9(b) of the order, the proposed exclusion stated that, if such a contract is subsequently extended or renewed, or an option is subsequently exercised under that contract, the Executive order and part 23 would apply to that extension, renewal, or option. The Department noted that, based on a plain reading of the language of section 9(b) of the order, this exclusion is only applicable to contracts resulting from solicitations that are issued prior to January 30, 2022, and that are entered into by March 30, 2022. Any covered contract entered into on or after March 31, 2022, will be subject to Executive Order 14026 and part 23 regardless of when such solicitation was issued. Moreover, the Department noted that this exclusion would not apply to contracts that are awarded outside the solicitation process.

The National Forest Recreation Association (NFRA) commented that this proposed exclusion ''results in inconsistent treatment between *original* contracts entered into between January 30, 2022 and March 30, 2022 and *options* entered into in that same time period when in both cases the contract or underlying contract resulted from a solicitation issued prior to January 30, 2022.'' The NFRA stated its belief that original contracts and exercised option periods should be treated in the same manner for purposes of this exclusion and therefore requested that the Department expand the exclusion set forth at § 23.40(g) to apply to both contracts and options entered into between January 30, 2022 and March 30, 2022, where the contract or underlying contract at issue resulted from a solicitation issued prior to January 30, 2022.

The Department has carefully considered the NFRA's suggestion, but declines to exempt option periods under covered contracts that are exercised on or between January 30, 2022 and March 30, 2022. As explained in the NPRM, the proposed exclusion at § 23.40(g) implements the narrow exception from general coverage principles set forth in section 9(b) of Executive Order 14026. *See* 86 FR 22837–38. The plain language of section 9(b) reflects that the exclusion only applies to ''new'' contracts or contract-like instruments that result from a solicitation issued prior to January 30, 2022, and that are entered into on or between January 30, 2022 and March 30, 2022. 86 FR 22837. Section 9(b)'s inapplicability to exercised options is reinforced by section 9(a) of the Order, which enumerates ''new'' contracts and contract-like instruments on the one hand and ''exercises of options on existing contracts or contract-like instruments contracts'' on the other as separate categories of generally covered contracts. *Id.* Moreover, section 9(b) expressly states that where ''an option is subsequently exercised under that [new] contract or contract-like instrument,'' Executive Order 14026 will apply to that option. 86 FR 22838. The Executive order itself thus distinguishes between original contracts and exercised option periods in its discussion of this limited exclusion. Because the Department's proposed exclusion is based on the plain language of Executive Order 14026, the Department declines to expand the exclusion; this provision is therefore adopted as proposed in the NPRM.

Section 23.50 Minimum Wage for Federal Contractors and Subcontractors

Proposed § 23.50 sets forth the minimum wage rate requirement for Federal contractors and subcontractors established in Executive Order 14026. *See* 86 FR 22835–36. Here, the Department generally discusses the minimum hourly wage protections provided by the Executive order for workers performing on or in connection with covered contracts with the Federal Government, as well as the methodology that the Secretary will use for determining the applicable minimum wage rate under the Executive order on an annual basis beginning at least 90 days before January 1, 2023. The Executive order provides that the minimum wage beginning January 1, 2023, and annually thereafter, will be an amount determined by the Secretary. It further provides that such rates be increased by the annual percentage increase in the CPI for the most recent month, quarter, or year available as determined by the Secretary. Consistent with the regulations implementing Executive Order 13658, *see* 29 CFR 10.5, the Secretary proposed to base such increases on the most recent year available to minimize the impact of seasonal fluctuations on the Executive order minimum wage rate. This section also emphasized that nothing in the Executive order or part 23 shall excuse noncompliance with any applicable Federal or state prevailing wage law or any applicable law or municipal ordinance establishing a minimum wage higher than the minimum wage established under the Executive order and part 23. *See* 86 FR 22836.

Finally, the Department proposed at § 23.50(d) to add language briefly discussing the relationship between Executive Order 13658 and this order. Consistent with section 6 of Executive Order 14026, *see* 86 FR 22836–37, the proposed provision explained that, as of January 30, 2022, Executive Order 13658 is superseded to the extent that it is inconsistent with Executive Order 14026 and part 23. The Department proposed that, unless otherwise excluded by § 23.40, workers performing on or in connection with a covered new contract, as defined in § 23.20, must be paid the minimum hourly wage rate established by Executive Order 14026 and part 23 rather than the lower hourly minimum wage rate established by Executive Order 13658 and its regulations. A more detailed discussion of the interaction between the Executive orders appears above in the discussion of contract coverage under § 23.30.

The Department received several comments regarding proposed § 23.50. A few commenters, including the AOA, the NSAA, and the Tennessee Paddlesports Association asserted that the Department's proposed methodology for determining and announcing the annual inflation-based updates to the Executive Order 14026 wage rate does not afford contractors, particularly in the outdoor recreation industry, sufficient advanced notice. Such commenters argued that the annual adjustments will create uncertainty regarding budget and pricing for these contracts, especially for small business concessionaires. The AOA explained, for example, that ''[d]ue to the popularity of some of the trips that our members provide, bookings can be made a year or more in advance, which locks in the price of the trip at that time. Moreover, rates for the services that our members provide under federal contracts in the National Parks generally are subject to federal rate approval processes that require long lead times for approval of rate requests.'' Because the Department is not required to publish notice of the annual updates to the minimum wage rate more than 90 days in advance of the effective date of the new rates, these commenters argued that the new wage rate is unlikely to be available when outfitters and guides set their prices, often in July or August, for the following summer. The AOA stated that this uncertainty with respect to the annual wage rate updates has particularly significant ramifications for outfitters and guides that enter into longer-term contracts. The NSAA requested that, given the alleged unique seasonality of ski area operations and pricing challenges as well as the fact that ski seasons straddle two calendar years, the Department include a provision allowing ski areas to implement any annual minimum wage increase not on January 1, but rather on October 1 of the following year after the minimum wage clause is included in a covered contract.

In response to these comments, the Department notes that the methodology underlying the annual wage rate updates to the Executive Order 14026 is established by sections 2(a) and (b) of the order; with the exception of the discretion accorded to the Department to base such increases on the most recent month, quarter, or year available, all other provisions regarding this methodology are directed by the Executive order itself. The Department thus declines to adopt the NSAA's request to delay the effective date of any annual wage rate increase until October 1 of the following year because the methodology used to determine the applicable wage rate, as well as the effective date for such rate, are clearly stated in Executive Order 14026 and the Department does not have discretionary authority to otherwise modify the amount or timing of such annual updates. With respect to commenter concerns that the annual update methodology set forth in Executive Order 14026 makes it difficult for contractors to forecast labor costs and account for such costs at the time they enter into new contracts, the Department notes that the methodology that the Department will use to determine any annual wage rate increase is based on the CPI–W and clearly set forth in the Executive order and this part. Contractors concerned about potential increases in the Executive Order 14026 minimum wage rate may thus consult the CPI–W, which the Federal Government publishes monthly, to monitor the likely magnitude of any annual increase. Moreover, in anticipating the typical magnitude of the annual wage rate increases, the Department notes that stakeholders may consult as a reference the annual wage rate increases that have been determined and published by the Department for the prior six years under Executive Order 13658, which sets forth a nearly identical methodology for determining such increases.

Moreover, the Department has decided to include language in the required contract clause (provided in Appendix A of this part) that, if appropriate, requires contractors to be compensated for the increase in labor costs resulting from the annual inflation-based increases to the Executive Order 14026 minimum wage beginning on January 1, 2023. This provision in the contract clause should mitigate at least some contractors' concerns about unanticipated financial disruptions that theoretically could occur due to the annual updates.

With respect to proposed § 23.50(c), the AFL–CIO and CWA, as well as the Center for American Progress, urge the Department to clarify that the order does not allow noncompliance with higher wages required under a CBA and that a CBA or wage law requiring a minimum wage lower than the Executive order's requirement does not allow noncompliance with the order. The Chamber, on the other hand, urged the Department to permit the payment of a wage rate lower than the applicable Executive order minimum wage where reflected in a CBA. These comments were discussed in the preamble section above regarding proposed § 23.10(b). As explained in that discussion, after careful consideration of the comments, the Department has determined to also add a clarification to § 23.50(c) to ensure full consistency between the regulatory text and the contract clause on this topic. The Department therefore amends § 23.50(c) by adding ''or any applicable contract'' to the provision, such that it reads as follows: ''Nothing in the Executive Order or this part shall excuse noncompliance with any applicable Federal or state prevailing wage law or any applicable law or municipal ordinance, or any applicable contract, establishing a minimum wage higher than the minimum wage established under the Executive Order and this part.'' Other than this clarification, the Department adopts § 23.50 as proposed.

Section 23.60 Antiretaliation

Proposed § 23.60 established an antiretaliation provision stating that it shall be unlawful for any person to discharge or in any other manner discriminate against any worker because such worker has filed any complaint or instituted or caused to be instituted any proceeding under or related to Executive Order 14026 or part 23, or has testified or is about to testify in any such proceeding. Consistent with the Executive Order 13658 regulations, *see* 29 CFR 10.6, this language was derived from the FLSA's antiretaliation provision set forth at 29 U.S.C. 215(a)(3) and was consistent with the Executive order's direction to adopt enforcement mechanisms as consistent as practicable with the FLSA, SCA, or DBA. The Department believes that such a provision will help ensure effective enforcement of Executive Order 14026. Consistent with the Supreme Court's observation in interpreting the scope of the FLSA's antiretaliation provision, enforcement of Executive Order 14026 will depend ''upon information and complaints received from employees seeking to vindicate rights claimed to have been denied.'' *Kasten* v. *Saint-Gobain Performance Plastics Corp.,* 563 U.S. 1, 11 (2011) (internal quotation marks omitted). Accordingly, the Department proposed to include an antiretaliation provision based on the FLSA's antiretaliation provision. *See* 29 U.S.C. 215(a)(3). Importantly, and consistent with the Supreme Court's interpretation of the FLSA's antiretaliation provision, the Department's proposed rule would protect workers who file oral as well as written complaints. *See Kasten,* 563 U.S. at 17.

Moreover, as under the FLSA, the proposed antiretaliation provision under part 23 would protect workers

who complain to the Department as well as those who complain internally to their employers about alleged violations of the order or part 23. *See, e.g., Greathouse* v. *JHS Sec. Inc.,* 784 F.3d 105, 111–16 (2d Cir. 2015); *Minor* v. *Bostwick Labs. Inc.,* 669 F.3d 428, 438 (4th Cir. 2012); *Hagan* v. *Echostar Satellite, LLC,* 529 F.3d 617, 626 (5th Cir. 2008); *Lambert* v. *Ackerley,* 180 F.3d 997, 1008 (9th Cir. 1999) (en banc); *Valerio* v. *Putnam Assocs. Inc.,* 173 F.3d 35, 43 (1st Cir. 1999); *EEOC* v. *Romeo Comty Sch.,* 976 F.2d 985, 989 (6th Cir. 1992). The Department also noted that the antiretaliation provision set forth in the proposed rule, like the FLSA's antiretaliation provision, would apply in situations where there is no current employment relationship between the parties; for example, it would protect a worker from retaliation by a prospective or former employer, or by a person acting directly or indirectly in the interest of an employer. *See Arias* v. *Raimondo,* 860 F.3d 1185 (9th Cir. 2017); *see also* WHD Fact Sheet #77A (''Prohibiting Retaliation Under the Fair Labor Standards Act (FLSA)''), available at *https://www.dol.gov/agencies/whd/fact-sheets/77a-flsa-prohibiting-retaliation.*

The Department received many comments, including from the AFL–CIO and CWA, the Business and Professional Women of St. Petersburg-Pinellas, Inc., the Leadership Conference on Civil and Human Rights, the National Urban League, NELP, Oxfam America, the SEIU, and the Teamsters, expressing strong support for the proposed antiretaliation provision. In commending this proposed provision, for example, the AFL–CIO and CWA explained, ''A $15 minimum wage requirement would mean little if employers could leverage their economic power over employees to threaten, coerce, or punish workers for seeking to enforce it. The antiretaliation provision, modeled on the FLSA's, gives effect to the President's instruction to incorporate FLSA principles into the governing regulation 'to the extent practicable.' '' The Teamsters similarly noted that workers ''can play a significant role in enforcing the wage provision by identifying noncompliant employers,'' and that, without an antiretaliation provision like the one set forth in the proposed rule, such workers ''would be less likely to speak out.'' The National Women's Law Center also expressed support for the provision, but urged the Department to clarify that an oral complaint need not be ''filed'' in a formal process to invoke the provision's protections and to affirm that these protections apply when an individual has a reasonable belief that the employer action about which they complain is a violation, even if that belief ultimately is mistaken. Jobs with Justice of East Tennessee similarly commended the provision, but encouraged the Department to ''develop enforcement protocols that are responsive to questions and complaints and that provide robust protection against threats and retaliatory action for workers who bring wage violations to light.''

The Department appreciates this feedback supportive of the proposed inclusion of an antiretaliation provision in this part and continues to believe that the antiretaliation provision serves an important purpose in effectuating and enforcing Executive Order 14026, as it does under Executive Order 13658. With respect to the National Women's Law Center's request for additional clarifications, the Department notes that the Executive order's antiretaliation provision is intended to mirror the scope of the FLSA's antiretaliation provision, as interpreted by the Department. For example, the Department regards the FLSA's antiretaliation provision as extending to internal complaints, and this final rule reflects that interpretation as well. With respect to the comment submitted by Jobs with Justice of East Tennessee encouraging the Department to develop enforcement protocols for this antiretaliation provision that are responsive to stakeholders and provide robust protection to workers, the Department agrees with the need for strong enforcement of this important provision. As explained in § 23.440(b), if the Administrator determines that any person has discharged or otherwise discriminated against any worker because that worker filed any complaint or instituted or caused to be instituted any proceeding under or related to Executive Order 14026 or these regulations, or because such worker testified or is about to testify in any such proceeding, the Administrator may provide for ''any relief to the worker as may be appropriate, including employment, reinstatement, promotion, and the payment of lost wages.'' The Department intends to robustly enforce the antiretaliation provision as explained in this rule.

The Department therefore adopts the antiretaliation provision at § 23.60 as proposed without modification.

Section 23.70 Waiver of Rights

Proposed § 23.70 provided that workers cannot waive, nor may contractors induce workers to waive, their rights under Executive Order 14026 or part 23. The Supreme Court has consistently concluded that an employee's rights and remedies under the FLSA, including payment of minimum wage and back wages, cannot be waived or abridged by contract. *See, e.g., Tony & Susan Alamo Found.* v. *Sec'y of Labor,* 471 U.S. 290, 302 (1985); *Barrentine* v. *Arkansas-Best Freight Sys., Inc.,* 450 U.S. 728, 740 (1981); *D.A. Schulte, Inc.* v. *Gangi,* 328 U.S. 108, 112–16 (1946); *Brooklyn Sav. Bank* v. *O'Neil,* 324 U.S. 697, 706–07 (1945). The Supreme Court has reasoned that the FLSA was intended to establish a ''uniform national policy of guaranteeing compensation for all work'' performed by covered employees. *Jewell Ridge Coal Corp.* v. *Local No. 6167, United Mine Workers,* 325 U.S. 161, 167 (1945) (internal quotation marks omitted). Consequently, the Court has held that ''[a]ny custom or contract falling short of that basic policy, like an agreement to pay less than the minimum wage requirements, cannot be utilized to deprive employees of their statutory rights.'' *Id.* (internal quotation marks omitted). In *Barrentine,* the Supreme Court reaffirmed the ''nonwaivable nature'' of these fundamental FLSA protections and stated that ''FLSA rights cannot be abridged by contract or otherwise waived because this would 'nullify the purposes' of the statute and thwart the legislative policies it was designed to effectuate.'' 450 U.S. at 740 (quoting *Brooklyn Sav. Bank,* 324 U.S. at 707). Moreover, FLSA rights are not subject to waiver because they serve an important public interest by protecting employers against unfair methods of competition in the national economy. *See Tony & Susan Alamo Found.,* 471 U.S. at 302. Releases and waivers executed by employees for unpaid wages (and fringe benefits) due them under the SCA are similarly without legal effect. 29 CFR 4.187(d). Because the public policy interests underlying the issuance of the Executive order would be similarly thwarted by permitting workers to waive, or contractors to induce workers to waive, their rights under Executive Order 14026 or part 23, the Department in proposed § 23.70 made clear that such waiver of rights is impermissible.

The Department received several comments, including comments from the AFL–CIO and CWA, SEIU, and Teamsters, expressing support for the Department's proposed prohibition on waiver of rights. The SEIU, for example, stated that it ''supports DOL's inclusion of this provision because it would protect vulnerable workers against

potentially unscrupulous contractors' efforts to coerce them into waiving their rights to receive the minimum wage provided by the Executive Order. If employers could induce workers to waive their rights under the Order, the minimum labor standard it imposes would be shot through with exceptions, undermining the unified contracting policy.'' The Teamsters similarly expressed that the Department ''correctly imports'' this important FLSA principle into its rule. The Department did not receive any comments opposing this provision. Accordingly, the Department adopts § 23.70 as proposed in the NPRM.

Section 23.80 Severability

Section 7 of Executive Order 14026 states that if any provision of the order, or the application of any such provision to any person or circumstance, is held to be invalid, the remainder of the order and the application shall not be affected. *See* 86 FR 22837. Consistent with this directive, the Department proposed to include a severability clause in part 23. Proposed § 23.80 explained that, if any provision of part 23 is held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, or stayed pending further agency action, the provision shall be construed so as to continue to give the maximum effect to the provision permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event the provision shall be severable from part 23 and shall not affect the remainder thereof.

The Department did not receive any specific comments requesting changes to this provision, and it is therefore adopted as set forth in the NPRM.

Subpart B—Federal Government Requirements

Subpart B of part 23 establishes the requirements for the Federal Government to implement and comply with Executive Order 14026. Section 23.110 addresses contracting agency requirements and § 23.120 addresses the requirements placed upon the Department.

Section 23.110 Contracting Agency Requirements

The Department proposed § 23.110(a) to implement section 2 of Executive Order 14026, which directs that executive departments and agencies must include a contract clause in any new contracts or solicitations for contracts covered by the Executive order. 86 FR 22835. The proposed section described the basic function of the contract clause, which is to require that workers performing work on or in connection with covered contracts be paid the applicable Executive order minimum wage. The proposed section stated that for all contracts subject to Executive Order 14026, except for procurement contracts subject to the FAR, the contracting agency must include the Executive order minimum wage contract clause set forth in Appendix A of part 23 in all covered contracts and solicitations for such contracts, as described in § 23.30. It further stated that the required contract clause directs, as a condition of payment, that all workers performing work on or in connection with covered contracts must be paid the applicable, currently effective minimum wage under Executive Order 14026 and § 23.50. The proposed section additionally provided that for procurement contracts subject to the FAR, contracting agencies must use the clause that will be set forth in the FAR to implement this rule. The FAR clause will accomplish the same purposes as the clause set forth in Appendix A and be consistent with the requirements set forth in this rule.

As the Department noted in the rulemaking for Executive Order 13658 and the NPRM preceding this final rule, including the full contract clause in a covered contract is an effective and practical means of ensuring that contractors receive notice of their obligations under the Executive order. *See* 79 FR 60668. Therefore, the Department advised in the NPRM that it continues to prefer that covered contracts include the contract clause in full. However, the Department noted that there could be instances in which a contracting agency, or a contractor, does not include the entire contract clause verbatim in a covered contract, but the facts and circumstances establish that the contracting agency, or contractor, sufficiently apprised a prime or lower-tier contractor that the Executive order and its requirements apply to the contract. In such instances, the Department said it would be appropriate to find that the full contract clause has been properly incorporated by reference. *See Nat'l Electro-Coatings, Inc.* v. *Brock,* Case No. C86–2188, 1988 WL 125784 (N.D. Ohio 1988); *In re Progressive Design & Build, Inc.,* WAB Case No. 87–31, 1990 WL 484308 (WAB Feb. 21, 1990). The Department specifically noted that the full contract clause will be deemed to have been incorporated by reference in a covered contract if the contract provides that ''Executive Order 14026 (Increasing the Minimum Wage for Federal Contractors), and its implementing regulations, including the applicable contract clause, are incorporated by reference into this contract as if fully set forth in this contract,'' with a citation to a web page that contains the contract clause in full, to the provision of the Code of Federal Regulations containing the contract clause set forth at Appendix A, or to the provision of the FAR containing the contract clause promulgated by the FARC to implement Executive Order 14026 and this rule. *See* 86 FR 38837.

The Center for Workplace Compliance and the National Industry Liason Group commented in support of the Department's acknowledgement in the NPRM preamble that the required contract clause can be incorporated by reference in certain situations. The National Industry Liason Group requested the Department to amend the language of the regulation and contract clause to explicitly permit incorporation of the contract clause by reference, which they asserted would reduce confusion. The Department declines to adopt such language, as the Department continues to prefer that contracting agencies and covered contractors include the required contract clause in full. Inclusion of the required contract clause in full reduces the risk of confusion or disputes over whether particular contractors or subcontractors received adequate notice that Executive Order 14026 and its requirements apply to their contracts.

Maximus requested that the Department add language ensuring that contracting agencies ''include the application of this Order to a contract as a minimum requirement for offering requests for proposals (RFPs).'' The Department declines this suggestion, because the text of proposed § 23.110(a) already proposed to require contracting agencies to include the contract clause in ''solicitations'' for covered contracts. *See also* 29 CFR 10.11(a) (establishing the same requirement for contracting agencies under Executive Order 13658).

The Department did not otherwise receive comments addressing proposed § 23.110(a), and accordingly finalizes the provision as proposed.

Proposed § 23.110(b) stated the consequences in the event that a contracting agency fails to include the contract clause in a covered contract. Proposed § 23.110(b) provided that if a contracting agency made an erroneous determination that Executive Order 14026 or part 23 did not apply to a particular contract or failed to include the applicable contract clause in a contract to which the Executive order

applies, the contracting agency, on its own initiative or within 15 calendar days of notification by an authorized representative of the Department, must include the clause in the contract retroactive to commencement of performance under the contract through the exercise of any and all authority that may be needed. The Department noted that the Administrator possesses analogous authority under the DBA, *see* 29 CFR 1.6(f), and it stated its belief that a similar mechanism for addressing an agency's failure to include the contract clause in a contract subject to the Executive order would enhance its ability to obtain compliance with the Executive order. *See* 86 FR 38837–38.

In the NPRM, the Department explained that, where a contract clause should have been originally inserted by the contracting agency, a contractor is entitled to an adjustment where necessary to pay any necessary additional costs when the contracting agency initially omits and then subsequently includes the contract clause in a covered contract. This approach, which is consistent with the SCA's implementing regulations, *see* 29 CFR 4.5(c), was therefore reflected in proposed § 23.440(e). The Department recognized that the mechanics of providing such an adjustment may differ between covered procurement contracts and the non-procurement contracts that the Department's contract clause covers. With respect to covered non-procurement contracts, the Department stated its belief that the authority conferred on agencies that enter into such contracts under section 4(b) of the Executive order includes the authority to provide such an adjustment. The Department noted that such an adjustment is not warranted under the Executive order or part 23 when a contracting agency includes the applicable Executive order contract clause but fails to include an applicable SCA or DBA wage determination. The proposed rule would require inclusion of a contract clause, not a wage determination, in covered contracts; thus, unlike the DBA's regulations at 29 CFR 1.6(f), it is a contracting agency's failure to include the required contract clause, not a failure to include a wage determination, that would trigger the entitlement to an adjustment as described in this paragraph. *See* 86 FR 38837–38.

The Center for Workplace Compliance expressed support for proposed § 23.110(b), pointing out its consistency with an analogous provision in the regulations implementing Executive Order 13658. *See* 29 CFR 10.11(b). The Department did not otherwise receive commenter feedback on proposed § 23.110(b), and has finalized the provision as proposed.

A few commenters requested that the Department clarify whether contracting agencies would be obligated to provide an equitable price adjustment to contractors in other circumstances. For example, AGC requested that the Department ''establish a mandatory clause that will allow for contract adjustments based on wage rate increases,'' which they asserted would ''reduce the risks associated with forecasting operational costs in the pre-award phase of federal construction projects as well as reduce confusion, delay, cost overruns, and possible litigation during the project delivery phase.'' Relatedly, AGC requested the Department to delete or clarify the phrase ''if appropriate'' in the sentence of the proposed contract clause providing that: ''[i]f appropriate, the contracting [agency] shall ensure the contractor is compensated only for the increase in labor costs resulting from the annual inflation increases in the Executive Order 14026 minimum wage beginning on January 1, 2023.'' Finally, Conduent requested ''confirmation of a [contractor's] right to an equitable adjustment if the new minimum wage is extended to [options] contracts entered into prior to January 30, 2022.''

The Department declines commenter requests to adopt a provision entitling contractors to mandatory price adjustments. As a threshold matter, the rules govering price adjustments for procurement contracts are governed by the FAR and are thus outside the scope of this rulemaking. If necessary, the FARC can address price adjustments in their rulemaking to implement Executive Order 14026, which will follow this rule. *See* 86 FR 22836. With respect to nonprocurement contracts, the Department believes that price adjustments are a discretionary tool that contracting agencies may provide to contractors if appropriate, based on the specific nature of the contract. If, for example, a multi-year contract assumes that worker wages will keep pace with economic inflation over time, the contractor presumably should not receive a price adjustment in response to an inflation-based increase in the Executive Order 14026 minimum wage rate. Among other things, the parties presumably would address whether and to what extent a contractor's increased labor costs will likely be mitigated or offset by efficiency gains and other benefits, discussed in Section IV(c)(4). For this reason, the Department has declined to add regulatory language addressing price adjustments to proposed § 23.110, and has retained the phrase ''if appropriate'' in paragraph (b)(2) of the required contract clause.

Proposed § 23.110(c) addressed the obligations of a contracting agency in the event that the contract clause had been included in a covered contract but the contractor may not have complied with its obligations under the Executive order or part 23. Specifically, proposed § 23.110(c) provided that the contracting agency must, upon its own action or upon written request of an authorized representative of the Department, withhold or cause to be withheld from the prime contractor under the contract or any other Federal contract with the same prime contractor, so much of the accrued payments or advances as may be necessary to pay workers the full amount of wages required by the Executive order. As explained in the NPRM, both the SCA and DBA provide for withholding to ensure the availability of monies for the payment of back wages to covered workers when a contractor or subcontractor has failed to pay the full amount of required wages. 29 CFR 4.6(i); 29 CFR 5.5(a)(2). The Department reasoned that withholding is likewise an appropriate remedy under the Executive order for all covered contracts because the order directs the Department to adopt SCA and DBA enforcement processes to the extent practicable and to exercise authority to obtain compliance with the order. 86 FR 22836. Consistent with withholding procedures under the SCA and DBA, proposed § 23.110(c) allowed the contracting agency and the Department to withhold or cause to be withheld funds from the prime contractor not only under the contract on which covered workers were not paid the Executive order minimum wage, but also under any other contract that the prime contractor has entered into with the Federal Government. Finally, the Department noted that a withholding remedy would be consistent with the requirement in section 2(a) of the Executive order that compliance with the specified obligations is an express ''condition of payment'' to a contractor or subcontractor. 86 FR 22835.

One commenter, the PSC, objected to the requirement in proposed § 23.110(c) that contracting agencies withhold funds from ''any other Federal contract with the same prime contractor'' where such withholding is necessary to pay workers the full amount of wages owed under a different contract. While agreeing that ''[w]ithholdings against 'bad wage actors' on individual contracts may be reasonable and proper,'' PSC asserted that ''the withholding of payments, and by flow-

down, operations on well-performing contracts may adversely affect the economy and efficiency in federal procurement by potentially stopping work on other important federal activities under unrelated contracts.'' Relatedly, the PSC asked for additional regulatory language clarifying ''at what point and under what grounds a withholding decision will be imposed.''

While the Department appreciates PSC's concerns about the potential consequences of cross-withholding, such withholding is a well-established and essential method of ensuring that workers receive the wages owed to them when insufficient funds are available under the contract on which they are working. Moreover, as explained in the NPRM, requiring contracting agencies to withhold funds from different government contracts involving the same prime contractor is essentially identical to the regulations implementing the DBA and SCA, as well as the text of the SCA itself and the regulations implementing Executive Order 13658. *See* 29 CFR 10.11(c). Consistent with the Executive order's command to ''incorporate existing . . . procedures, remedies, and enforcement processes'' under the DBA, SCA, and Executive Order 13658, *see* 86 FR 22836, the Department declines PSC's request to remove language authorizing cross-withholding from proposed § 23.110(c).

In response to PSC's request for additional language clarifying the circumstances when withholding actions will be initiated, the Department believes that the language in proposed § 23.110(c)—which mirrors language implementing Executive Order 13658 at 29 CFR 10.11(c)—is sufficiently clear and detailed, and that further elaboration is not necessary, particularly since § 23.120(d) provides that in the event of a withholding request by the Administrator, the Administrator and/or the contracting agency shall notify the affected prime contractor of the Administrator's withholding request. Accordingly, the Department has adopted proposed § 23.110(c) without change.

Proposed § 23.110(d) described a contracting agency's responsibility to forward to the WHD any complaint alleging a contractor's non-compliance with Executive Order 14026, as well as any information related to the complaint. The Department recognized that, in addition to filing complaints with WHD, some workers or other interested parties may file formal or informal complaints concerning alleged violations of the Executive order or part 23 with contracting agencies. Proposed § 23.110(d) therefore specifically required the contracting agency to transmit the complaint-related information identified in § 23.110(d)(1)(ii)(A)–(E) to the WHD's Division of Government Contracts Enforcement within 14 calendar days of receipt of a complaint alleging a violation of the Executive order or part 23, or within 14 calendar days of being contacted by the WHD regarding any such complaint, consistent with the Department's regulations implementing Executive Order 13658. *See* 29 CFR 10.11(d). The Department posited that adoption of the language in proposed § 23.110(d), which includes an obligation to send such complaint-related information to WHD even absent a specific request (*e.g.,* when a complaint is filed with a contracting agency rather than with the WHD), is appropriate because prompt receipt of such information from the relevant contracting agency will allow the Department to fulfill its charge under the order to implement enforcement mechanisms for obtaining compliance with the order. 86 FR 22836.

One commenter, Maximus, expressed concern that ''opening the complaints process to those without a direct current or former employment relationship could lead to spurious, meritless claims that burden the Department, agencies, and contractors resources,'' and recommended the Department to ''accept complaints only from those with a direct current or former employment relationship, or their legally recognized representative.'' The Department declines this request to bar third-party complaints. Although the Department has safeguards in place to protect worker complainants,[19] the Department's enforcement experience underscores that workers are often reluctant to approach the government with valid wage and hour complaints due to fears of retaliation or other adverse consequences. For this reason, the Department has historically accepted third-party wage and hour complaints,[20] which in the Department's experience can provide valuable information to enhance the Department's enforcement efforts. Accordingly, consistent with its implementation of Executive Order 13658, the Department will accept third-party complaints with respect to alleged violations of Executive Order 14026.

The Department did not receive any other comments addressing proposed § 23.110(d), and has finalized the provision without change.

Section 23.120 Department of Labor Requirements

Proposed § 23.120 addressed the Department's requirements under the Executive order. Pursuant to the Executive order, proposed § 23.120(a) set forth the Secretary's obligation to establish the Executive order minimum wage on an annual basis, while proposed § 23.120(b) explained that the Secretary will determine the applicable minimum wages on an annual basis by using the method set forth in proposed § 23.50(b).

In response to these provisions, Maximus recommended that the Department ''update all rates for all roles [under the DBA and SCA] to address the wage compression within and across job category wage determinations to ensure consistency across all contractors.'' PSC similarly requested the Department to ''harmonize wage determinations'' with Executive Order 14026 to maintain wage differentiation among classes of workers subject to the DBA and SCA. The Department declines these requests because they are outside the scope of this rulemaking, as Executive Order 14026's minimum wage requirement is a separate and distinct legal obligation from the DBA and SCA's prevailing wage requirements. The Department did not otherwise receive any comments germane to proposed § 23.120(a) and (b), and has finalized these provisions as proposed.

Proposed § 23.120(c) explained how the Secretary will provide notice to contractors and subcontractors of the applicable Executive order minimum wage on an annual basis. The proposed section indicated that the WHD Administrator will publish a notice in the **Federal Register** on an annual basis at least 90 days before any new minimum wage is to take effect. Additionally, the proposed provision stated that the Administrator will publish and maintain on *https://alpha.sam.gov/content/wage-determinations,* or any successor website, the applicable minimum wage to be paid to workers performing on or in connection with covered contracts, including the cash wage to be paid to tipped employees. The proposed section further stated that the Administrator may also publish the applicable wage to be paid to workers performing on or in

[19] For example, WHD generally does not disclose the reasons why it begins particular investigations (approximately half of all investigations are initiated without a prior complaint), and will generally neither confirm nor deny the existence of complaint records in response to information requests submitted under the Freedom of Information Act. *See* 5 U.S.C. 552(b)(7)(D).

[20] *See https://www.dol.gov/agencies/whd/contact/complaints/third-party.*

connection with covered contracts, including the cash wage to be paid to tipped employees, on an annual basis at least 90 days before any such minimum wage is to take effect in any other manner the Administrator deems appropriate.

Consistent with the rulemaking implementing Executive Order 13658, *see* 29 CFR 10.12(c), the Department noted its intent to publish a prominent general notice on SCA and DBA wage determinations, stating the Executive Order 14026 minimum wage and that it applies to all DBA- and SCA-covered contracts. The Department stated its intention to update this general notice on all DBA and SCA wage determinations annually to reflect any inflation-based adjustments to the Executive order minimum wage. As discussed in more detail in the preamble section pertaining to proposed § 23.290 in subpart C, the Department also proposed developing a poster regarding the Executive order minimum wage for contractors with FLSA-covered workers performing on or in connection with a covered contract, as it did in response to Executive Order 13658. *See* 79 FR 60670. The Department proposed requiring that contractors provide notice of the Executive order minimum wage to FLSA-covered workers performing work on or in connection with covered contracts via posting of the poster that will be provided by the Department. This notice provision is discussed in the preamble section pertaining to § 23.290, and is also consistent with the rule implementing Executive Order 13658. *See* 29 CFR 10.29(b).

The Department did not receive any comments regarding the Department's methods for announcing future changes to the Executive Order 14026 wage rate, and has accordingly finalized § 23.120(c) as proposed.

Consistent with the regulations implementing Executive Order 13658, proposed § 23.120(d) addressed the Department's obligation to notify a contractor in the event of a request for the withholding of funds. Under proposed § 23.110(c), the WHD Administrator may direct that payments due on the covered contract or any other contract between the contractor and the Federal Government may be withheld as may be considered necessary to pay unpaid wages. If the Administrator exercises his or her authority under § 23.110(c) to request withholding, proposed § 23.120(d) would require the Administrator or the contracting agency to notify the affected prime contractor of the Administrator's withholding request to the contracting agency. The Department noted that both the Administrator and the contracting agency may notify the contractor in the event of a withholding even though notice is required from only one of them.

As discussed earlier in response to Maximus' request for additional guidance on withholding actions in proposed § 23.110(c), the Department believes that the language in proposed § 23.120(d)—which discusses the Department's role in withholding actions and which is identical to the corresponding language in the regulations implementing Executive Order 13658—is sufficiently clear. The Department did not otherwise receive any other comments relevant to proposed § 23.120(d), and has finalized this provision as proposed.

Subpart C—Contractor Requirements

Subpart C articulates the requirements that contractors must comply with under Executive Order 14026 and part 23. The subpart sets forth the general obligation to pay no less than the applicable Executive order minimum wage to workers for all hours worked on or in connection with the covered contract, and to include the Executive order minimum wage contract clause in all contracts and subcontracts of any tier thereunder. Subpart C also sets forth contractor requirements pertaining to permissible deductions, frequency of pay, and recordkeeping, as well as a prohibition against taking kickbacks from wages paid on covered contracts.

Section 23.210 Contract Clause

Proposed § 23.210(a) required the contractor, as a condition of payment, to abide by the terms of the Executive order minimum wage contract clause described in proposed § 23.110(a). The contract clause contains the obligations with which the contractor must comply on the covered contract and is reflective of the contractor's requirements as stated in the proposed regulations. Proposed § 23.210(b) articulated the obligation that contractors and subcontractors must insert the Executive order minimum wage contract clause in any covered subcontracts and must require, as a condition of payment, that subcontractors include the clause in all lower-tier subcontracts. Under the proposal, the prime contractor and upper-tier contractor would be responsible for compliance by any covered subcontractor or lower-tier subcontractor with the Executive order minimum wage contract clause, consistent with analogous requirements under the SCA, DBA, and Executive Order 13658. *See* 29 CFR 4.114(b) (SCA); 29 CFR 5.5(a)(6) (DBA); 29 CFR 10.21 (Executive Order 13658). Finally, consistent with the rulemaking implementing Executive Order 13658, proposed § 23.210(b) advised that a contractor under part 23 would be responsible for compliance by all covered lower-tier subcontractors. This obligation would apply whether or not the contractor has included the Executive order contract clause, regardless of the number of covered lower-tier subcontractors, and regardless of how many levels of subcontractors separate the responsible prime or upper-tier contractor from the subcontractor that failed to comply with the Executive order.

The Department received a number of comments concerning proposed § 23.210. For example, AGC requested the Department to create a ''safe harbor'' from liability for prime and higher-tier subcontractors that properly flow down the required contract clause to their direct subcontractors, asserting that ''it is inequitable to hold such contractors responsible for all lower-tier subcontractors' noncompliance with the minimum wage requirements . . . when the higher-tier contractor has complied with the language flow-down requirement.'' The AOA similarly requested that the Department modify proposed § 23.210 so that ''contractors have no further obligation with respect to enforcement and compliance by any subcontractor with the Executive Order's minimum wage requirements'' beyond including the required contract clause, stating that ''contractors lack the enforcement authority of a governmental entity.'' However, NELP specifically complimented the ''flow-down'' language in proposed § 23.210(b), observing that such language ''ensur[es] that federal contractors cannot plead ignorance to any minimum wage violations that their subcontracted workers face.''

After careful consideration, the Department has decided to adopt proposed § 23.210 as set forth in the NPRM. Specifically, the Department declines to adopt the request to provide a safe harbor from flow-down liability to a contractor that includes the contract clause in its contracts with subcontractors. As discussed more fully in the preamble section for § 29.440, which discusses remedies and sanctions under this part, neither the SCA nor DBA nor Executive Order 13658, all of which permit the Department to hold a contractor responsible for compliance by any lower-tier contractor, contain a safe harbor. Furthermore, the Executive Order directs the Department to look to the DBA, SCA, and Executive Order 13658 in adopting remedies. A safe

harbor could diminish the level of care contractors exercise in selecting subcontractors on covered contracts and reduce contractors' monitoring of the performance of subcontractors—two ''vital functions'' served by the flowdown responsibility. *In the Matter of Bongiovanni,* WAB Case No. 91–08, 1991 WL 494751 (WAB April 19, 1991). Additionally, a contractor's responsibility for the compliance of its lower-tier subcontractors enhances the Department's ability to obtain compliance with the Executive Order. For these reasons, the Department rejected similar requests for a safe harbor provision in the 2014 final rule implementing Executive Order 13658. *See* 79 FR 60671.

As discussed earlier in the context of contracting agency responsibilities under § 23.110(a), the Department acknowledges that the contract clause can be considered incorporated by reference in certain circumstances, including in subcontracts. However, because the Department recommends that contracting agencies and covered contractors include the required contract clause in full to reduce the risk of confusion or disputes over whether the contract clause was properly incorporated, the Department declines the National Industry Liason Group's request to add regulatory language explicitly allowing for incorporation of the contract clause by reference.

Section 23.220 Rate of Pay

Proposed § 23.220 addressed contractors' obligations to pay the Executive order minimum wage to workers performing work on or in connection with a covered contract under Executive Order 14026. Proposed § 23.220(a) stated the general obligation that contractors must pay workers the applicable minimum wage under Executive Order 14026 for all hours spent performing work on or in connection with the covered contract. The proposed section also provided that workers performing work on or in connection with contracts covered by the Executive order must receive not less than the minimum hourly wage of $15.00 beginning January 30, 2022.

Two commenters, ABC and AGC, requested that the Department modify the regulations so that the Executive Order 14026 wage rate at the onset of a multi-year contract would remain fixed for the duration of the contract, consistent with the treatment of wage determinations under the DBA. AGC asserted that applying minimum wage increases after contract award would create uncertainty and problems in the procurement process.

The Department rejects this request. As we advised in the NPRM, the Department believes that the applicable minimum wage rate under Executive Order 14026 must be subject to annual increases for the duration of multi-year contracts. This is consistent with the text of Executive Order 14026 as well as with the Department's interpretation of Executive Order 13658, as nothing in either Executive order suggests that the minimum wage requirement should remain stagnant during the span of a covered multi-year contract. *See* 79 FR 60673 (discussing Executive Order 13658). Allowing the applicable minimum wage to increase throughout the duration of multi-year contracts fulfills the Executive order's intent to raise the minimum wage of workers according to annual increases in the CPI–W. It additionally ensures simultaneous application of the same minimum wage rate to all covered workers, a simplicity that has presumably benefited contractors and workers alike in the application of Executive Order 13658. The Department further notes that contractors concerned about potential increases in the minimum wage provided under the Executive order may consult the CPI–W, which the Federal Government publishes monthly, to monitor the likely magnitude of the annual increase. Furthermore, as discussed in further detail in relation to § 23.440(e), the language of the required contract clause contained in Appendix A will require contracting agencies to ensure, if appropriate, that the contractor is compensated for an increase in labor costs resulting from annual inflation increases in the Executive Order 14026 minimum wage beginning on January 1, 2023. This provision in the contract clause should mitigate any potential contractor concerns about unanticipated financial burdens associated with annual increases in the Executive order minimum wage.

The Department notes that, in order to comply with the Executive order's minimum wage requirement, a contractor can compensate workers on a daily, weekly, or other time basis (no less often than semi-monthly), or by piece or task rates, so long as the measure of work and compensation used, when translated or reduced by computation to an hourly basis each workweek, would provide a rate per hour that is no lower than the applicable Executive order minimum wage. Whatever system of payment is used, however, must ensure that each hour of work in performance of the contract is compensated at not less than the required minimum rate. Failure to pay for certain hours at the required rate cannot be transformed into compliance with the Executive order or part 23 by reallocating portions of payments made for other hours that are in excess of the specified minimum.

In determining whether a worker is performing within the scope of a covered contract, the Department proposed that all workers who are engaged in working on or in connection with the contract, either in performing the specific services called for by its terms or in performing other duties necessary to the performance of the contract, would be subject to the Executive order and part 23 unless a specific exemption is applicable. This standard was derived from the SCA's implementing regulations at 29 CFR 4.150, and is consistent with Executive Order 13658's implementing regulations at 29 CFR 10.22. As discussed earlier, the Department acknowledges commenter criticisms of the Executive Order's coverage of workers performing ''in connection with'' covered contracts, but notes that the Executive Order explicitly applies to such workers. In any event, the 20 percent exclusion codified in in § 23.40(f) should allay these concerns.

Proposed § 23.220(a) explained that the contractor's obligation to pay the applicable minimum wage to workers on or in connection with covered contracts does not excuse noncompliance with any applicable Federal or state prevailing wage law, or any applicable law or municipal ordinance establishing a minimum wage higher than the minimum wage established under Executive Order 14026. This proposed provision would implement section 2(c) of the Executive order. 86 FR 22836.

As explained earlier, the minimum wage requirements of Executive Order 14026 are separate and distinct legal obligations from the prevailing wage requirements of the SCA and the DBA. If a contract is covered by the SCA or DBA and the wage rate on the applicable SCA or DBA wage determination for the classification of work the worker performs is less than the applicable Executive order minimum wage, the contractor must pay the Executive order minimum wage in order to comply with the Order and part 23. If, however, the applicable SCA or DBA prevailing wage rate exceeds the Executive order minimum wage rate, the contractor must pay that prevailing wage rate to the SCA- or DBA-covered

worker in order to be in compliance with the SCA or DBA.[21]

The minimum wage requirements of Executive Order 14026 are also separate and distinct from the commensurate wage rates under 29 U.S.C. 214(c). If the commensurate wage rate paid to a worker performing on or in connection with a covered contract whose wages are calculated pursuant to a special certificate issued under 29 U.S.C. 214(c), whether hourly or piece rate, is less than the Executive Order 14026 minimum wage, the contractor must pay the Executive Order 14026 minimum wage rate to achieve compliance with the order. The Department noted in the NPRM that if the commensurate wage due under the certificate is greater than the Executive Order 14026 minimum wage, the contractor must pay the worker the greater commensurate wage. Paragraph (b)(5) of the contract clause states this point explicitly. A more detailed discussion of that provision was included in the preamble section of the NPRM for Appendix A.

As in the rulemaking implementing Executive Order 13658, the Department noted that in the event that a collectively bargained wage rate is below the applicable DBA rate, a DBA-covered contractor must pay no less than the applicable DBA rate to covered workers on the project. *See* 79 FR 60673. Although a successor contractor on an SCA-covered contract is required under the SCA only to pay wages and fringe benefits not less than those contained in the predecessor contractor's CBA even if an otherwise applicable area-wide SCA wage determination contains higher wage and fringe benefit rates, that requirement was derived from a specific statutory provision that expressly bases SCA obligations on the predecessor contractor's CBA wage and fringe benefit rates in particular circumstances. *See* 41 U.S.C. 6707(c); 29 CFR 4.1b. There is no similar indication in the Executive order of an intent to permit a CBA rate lower than the Executive order minimum wage rate to govern the wages of workers covered by the order. The Department accordingly proposed that the Executive order minimum wage would apply to a covered contract even if the contractor has negotiated a CBA wage rate lower than the order's minimum wage.

Proposed § 23.220(b) explained how a contractor's obligation to pay the applicable Executive order minimum wage would apply to workers who receive fringe benefits. It proposed that a contractor may not discharge any part of its minimum wage obligation under the Executive order by furnishing fringe benefits or, with respect to workers whose wages are governed by the SCA, the cash equivalent thereof. Under the proposed rule, contractors must pay the Executive order minimum wage rate in monetary wages, and may not receive credit for the cost of fringe benefits furnished.

ABC criticized proposed 23.220(b) on the grounds that it would be inconsistent with the treatment of fringe benefits under the DBA, where contractors can satisfy prevailing wage requirements with any combination of wages and bona fide fringe benefits as long as the wage component matches or exceeds the FLSA minimum wage.[22] ABC alleged that requiring DBA-covered contractors to satisfy Executive Order 14026's minimum wage requirement through wages alone would be ''confusing to administer and will lead to needless burdens on contractors.''

The Department declines ABC's request to allow contractors to credit fringe benefits towards the Executive Order 14026 minimum wage requirement. By repeatedly referencing that it is establishing a higher ''hourly minimum wage'' without any reference to fringe benefits, the text of the Executive order makes clear that a contractor cannot discharge its minimum wage obligation by furnishing fringe benefits. *See* 86 FR 22835. This interpretation is consistent with the SCA, which does not permit a contractor to meet its minimum wage obligation through the furnishing of fringe benefits, but rather imposes distinct ''minimum wage'' and ''fringe benefit'' obligations on contractors. 41 U.S.C. 6703(1)–(2); 29 CFR 4.177(a). Similarly, the FLSA does not allow a contractor to meet its minimum wage obligation through the furnishing of fringe benefits. Although the DBA specifically includes fringe benefits within its definition of minimum wage, thereby allowing a contractor to meet its minimum wage obligation, in part, through the furnishing of fringe benefits, 40 U.S.C. 3141(2), Executive Order 14026 contains no similar provision expressly authorizing a contractor to discharge its Executive order minimum wage obligation through the furnishing of fringe benefits. Consistent with the Executive order, and the Department's regulations implementing Executive Order 13658, *see* 29 CFR 10.22(b), the Department has decided to finalize § 23.220(b) as proposed, precluding a contractor from discharging its minimum wage obligation by furnishing fringe benefits.

Proposed § 23.220(b) also prohibited a contractor from discharging its Executive order minimum wage obligation to workers whose wages are governed by the SCA by furnishing the cash equivalent of fringe benefits. As noted, the SCA imposes distinct ''minimum wage'' and ''fringe benefit'' obligations on contractors. 41 U.S.C. 6703(1)–(2); 29 CFR 4.177(a). A contractor cannot satisfy any portion of its SCA minimum wage obligation by furnishing fringe benefits or their cash equivalent. *Id.* Consistent with the treatment of fringe benefits or their cash equivalent under the SCA, proposed § 23.220(b) would not allow contractors to discharge any portion of their minimum wage obligation under the Executive order to workers whose wages are governed by the SCA through the provision of either fringe benefits or their cash equivalent. The Department did not receive any comments on this aspect of proposed § 23.220(b), and has adopted this language without change.

Finally, proposed § 23.220(c) stated that a contractor may satisfy the wage payment obligation to a tipped employee under the Executive order through a combination of paying not less than a determined hourly cash wage and taking a credit toward the minimum wage required by the order based on tips received by such employee, pursuant to the provisions in proposed § 23.280. Contractors may not credit employee tips toward their minimum wage obligation after January 1, 2024, when 100 percent of the minimum wage required under the order must be paid as a cash wage. *See* § 23.280(a)(1)(iii). The Department did not receive any comments on proposed § 23.220(c), and has finalized it as proposed.

Section 23.230 Deductions

Proposed § 23.230 explained that deductions that reduce a worker's wages below the Executive order minimum wage rate may only be made under the limited circumstances set forth in this section. Proposed § 23.230(a) permitted deductions required by Federal, state, or local law, including Federal or state withholding of income taxes. *See* 29

[21] The Department further noted in the NPRM that if a contract is covered by a state prevailing wage law that establishes a higher wage rate applicable to a particular worker than the Executive order minimum wage, the contractor must pay that higher prevailing wage rate to the worker. Section 2(c) of the order expressly provides that it does not excuse noncompliance with any applicable state prevailing wage law or any applicable law or municipal ordinance establishing a minimum wage higher than the Executive order minimum wage.

[22] *See* Chapter 15f07, Discharging minimum wage and fringe benefit obligations under DBRA, U.S. Department of Labor Field Operations Handbook (March 31, 2016), *https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/FOH_Ch15.pdf; see also* 40 U.S.C. 3141(2).

CFR 531.38 (FLSA); 29 CFR 4.168(a) (SCA); 29 CFR 3.5(a) (DBA). Proposed § 23.230(b) permitted deductions for payments made to third parties pursuant to court orders. Permissible deductions made pursuant to a court order may include such deductions as those made for child support. *See* 29 CFR 531.39 (FLSA); 29 CFR 4.168(a) (SCA); 29 CFR 3.5(c) (DBA). Proposed § 23.230(b) echoed the principle established under the FLSA, SCA, and DBA that only garnishment orders made pursuant to an ''order of a court of competent and appropriate jurisdiction'' may deduct a worker's hourly wage below the minimum wage set forth under the Executive order. 29 CFR 531.39(a) (FLSA); 29 CFR 4.168(a) (SCA) (permitting garnishment deductions ''required by court order''); 29 CFR 3.5(c) (DBA) (permitting garnishment deductions ''required by court process''). For purposes of deductions made under Executive Order 14026, the phrase ''court order'' includes orders issued by Federal, state, local, and administrative courts.

Consistent with the rulemaking implementing previous Executive Order 13658, *see* 79 FR 60674, the Executive order minimum wage will not affect the formula for establishing the maximum amount of wage garnishment permitted under the Consumer Credit Protection Act (CCPA), which is derived in part from the FLSA minimum wage. *See* 15 U.S.C. 1673(a)(2).

Proposed § 23.230(c) permitted deductions directed by a voluntary assignment of the worker or his or her authorized representative. *See* 29 CFR 531.40 (FLSA); 29 CFR 4.168(a) (SCA); 29 CFR 5.5(a)(1) (DBA). Deductions made for voluntary assignments include items such as, but not limited to, deductions for the purchase of U.S. savings bonds, donations to charitable organizations, and the payment of union dues. Deductions made for voluntary assignments must be made for the worker's account and benefit pursuant to the request of the worker or his or her authorized representative. *See* 29 CFR 531.40 (FLSA); 29 CFR 4.168(a) (SCA); 29 CFR 5.5(a)(1) (DBA).

Deductions for health insurance premiums that reduce a worker's wages below the minimum wage required by the Executive order are generally impermissible under proposed § 23.220(b). However, a contractor may make deductions for health insurance premiums that reduce a worker's wages below the Executive order minimum wage if the health insurance premiums are the type of deduction that 29 CFR 531.40(c) permits to reduce a worker's wages below the FLSA minimum wage. The regulations at 29 CFR 531.40(c) allow deductions for insurance premiums paid to independent insurance companies provided that such deductions occur as a result of a voluntary assignment from the employee or his or her authorized representative, where the employer is under no obligation to supply the insurance and derives, directly or indirectly, no benefit or profit from it. The Department reiterated, however, that in accordance with proposed § 23.220(b), a contractor may not discharge any part of its minimum wage obligation under the Executive order by furnishing fringe benefits or, with respect to workers whose wages are governed by the SCA, the cash equivalent thereof. This provision similarly would not change a contractor's obligation under the SCA to furnish fringe benefits (including health insurance) or the cash equivalent thereof ''separate from and in addition to the specified monetary wages'' under that Act. 29 CFR 4.170.

Finally, proposed § 23.230(d) permitted deductions made for the reasonable cost or fair value of board, lodging, and other facilities. *See* 29 CFR part 531 (FLSA); 29 CFR 4.168(a) (SCA); 29 CFR 5.5(a)(1) (DBA). Deductions made for these items must be in compliance with the regulations in 29 CFR part 531. The Department noted that an employer may take credit for the reasonable cost or fair value of board, lodging, or other facilities against a worker's wages, rather than taking a deduction for the reasonable cost or fair value of these items. *See* 29 CFR part 531.

The Department did not receive any comments addressing proposed § 23.230 or the general topic of deductions. Accordingly, the Department has finalized § 23.230 as proposed.

Section 23.240 Overtime Payments

Proposed § 23.240(a) explained that workers who are covered under the FLSA or the Contract Work Hours and Safety Standards Act (CWHSSA) must receive overtime pay of not less than one and one-half times the regular hourly rate of pay or basic rate of pay, respectively, for all hours worked over 40 hours in a workweek. *See* 29 U.S.C. 207(a); 40 U.S.C. 3702(a). These statutes, however, do not require workers to be compensated on an hourly rate basis; workers may be paid on a daily, weekly, or other time basis, or by piece rates, task rates, salary, or some other basis, so long as the measure of work and compensation used, when reduced by computation to an hourly basis each workweek, will provide a rate per hour (*i.e.,* the regular rate of pay) that will fulfill the requirements of the Executive order or applicable statute. The regular rate of pay under the FLSA is generally determined by dividing the worker's total earnings in any workweek by the total number of hours actually worked by the worker in that workweek for which such compensation was paid. *See* 29 CFR 778.5 through 778.7, 778.105, 778.107, 778.109, 778.115 (FLSA); 29 CFR 4.166, 4.180 through 4.182 (SCA); 29 CFR 5.32(a) (DBA).

Proposed § 23.240(b) addressed the payment of overtime premiums to tipped employees who are paid with a tip credit. In calculating overtime payments, the regular rate of an employee paid with a tip credit would consist of both the cash wages paid and the amount of the tip credit taken by the contractor. Overtime payments would not be computed based solely on the cash wage paid. For example, if on or after January 30, 2022, a contractor pays a tipped employee performing on a covered contract a cash wage of $10.50 and claims a tip credit of $4.50, the worker is entitled to $22.50 per hour for each overtime hour ($15.00 × 1.5), not $15.75 ($10.50 × 1.5). Accordingly, as of January 30, 2022, for contracts covered by the Executive order, if a contractor pays the minimum cash wage of $10.50 per hour and claims a tip credit of $4.50 per hour, then the cash wage due for each overtime hours would be $18.00 ($22.50 − $4.50). Tips received by a tipped employee in excess of the amount of the tip credit claimed are not considered to be wages under the Executive order and are not included in calculating the regular rate for overtime payments.

The AFL–CIO and CWA, the SEIU, and the Teamsters commented in support of the Department's interpretation in proposed § 23.240(b) that tipped employees who work overtime are entitled to time and half based on both the cash wages paid and the amount of the tip credit the contractor takes. Specifically, these commenters opined that including the tip credit in a tipped employee's regular rate of pay will ensure that tipped employees are paid appropriately for overtime work and will promote the broader efficiency interests motivating the Executive order. The Department agrees, and further notes that the interpretation in proposed § 23.240(b) is consistent with the treatment of tipped employees under the FLSA, *see* 29 CFR 531.60, as well as an analogous provision implementing Executive order 13658. *See* 29 CFR 10.24(b).

The Department did not otherwise receive any comments addressing

proposed § 23.240 or the mechanics of how to determine overtime pay for workers covered by Executive Order 14026. Accordingly, the Department has finalized § 23.240 as proposed.

Section 23.250 Frequency of Pay

Proposed § 23.250 described how frequently the contractor must pay its workers. Under the proposed rule, wages must be paid no later than one pay period following the end of the regular pay period in which such wages were earned or accrued. Proposed § 23.250 also provided that a pay period under the Executive order may not be of any duration longer than semi-monthly. (The Department noted in the NPRM that workers whose wages are governed by the DBA must be paid no less often than once a week and reiterated that compliance with the Executive order does not excuse noncompliance with applicable FLSA, SCA, or DBA requirements.) The Department derived proposed § 23.250 from the contract clauses applicable to contracts subject to the SCA and the DBA, *see* 29 CFR 4.6(h) (SCA); 29 CFR 5.5(a)(1) (DBA). While the FLSA does not expressly specify a minimum pay period duration, it is a violation of the FLSA not to pay a worker on his or her regular payday. *See Biggs* v. *Wilson,* 1 F.3d 1537, 1538 (9th Cir. 1993) (holding that ''under the FLSA wages are 'unpaid' unless they are paid on the employees' regular payday''). *See also* 29 CFR 778.106 (''The general rule is that overtime compensation earned in a particular workweek must be paid on the regular pay day for the period in which such workweek ends.''). As the Department's experience suggested that most covered contractors pay no less frequently than semi-monthly, the Department stated its belief that § 23.250 as proposed will not be a burden to FLSA-covered contractors.

Maximus recommended adding clarifying language to proposed § 23.250 advising that, should a payroll error occur, it is the responsibility of the contractor to make good faith efforts to compensate employees and adhere to state-by-state pay laws. The Department agrees that a contractor would be required to ensure that it had properly compensated its employees in accordance with this final rule in the event of a payroll error, but declines to add additional language to proposed § 23.250 because the regulatory text at § 23.50(c) and § 23.220(a) already makes sufficiently clear that this rule does not excuse noncompliance with applicable state laws. The Department did not otherwise receive comments on proposed § 23.250 and has finalized it as proposed.

Section 23.260 Records To Be Kept by Contractors

Proposed § 23.260 explained the recordkeeping and related requirements for contractors. The obligations set forth in proposed § 23.260 were derived from and consistent across the FLSA, SCA, DBA, and regulations implementing Executive Order 13658. *See* 29 CFR 516.2(a) (FLSA); 29 CFR 4.6(g)(1) (SCA); 29 CFR 5.5(a)(3)(i) (DBA); 29 CFR 10.26 (Executive Order 13658). Proposed § 23.260(a) stated that contractors and subcontractors shall make and maintain, for three years, records containing the information enumerated in that section for each worker. The proposed section further provided that contractors performing work subject to the Executive order must make such records available for inspection and transcription by authorized representatives of the WHD.

The recordkeeping requirements enumerated in proposed § 23.260(a)(1)–(6) required that contractors maintain records reflecting each worker's (1) name, address, and social security number; (2) occupation or classification (or occupations/classifications); (3) rate or rates of wages paid; (4) number of daily and weekly hours worked; (5) any deductions made; and (6) total wages paid. Contractor obligations to maintain these records were derived from and consistent across the FLSA, SCA, and DBA, and were identical to the recordkeeping requirements enumerated in 29 CFR 10.26(a), which implemented Executive Order 13658. These recordkeeping requirements thus imposed no new burdens on contractors.[23] The Department noted that while the concept of ''total wages paid'' is consistent in the FLSA's, SCA's, and DBA's implementing regulations, the exact wording of the requirement varies (''total wages paid each pay period,'' *see* 29 CFR 516.2(a)(11) (FLSA); ''total daily or weekly compensation of each employee,'' *see* 29 CFR 4.6(g)(1)(ii) (SCA); ''actual wages paid,'' *see* 29 CFR 5.5(a)(3)(i) (DBA)). The Department opted to use the language ''total wages paid'' in the proposed rule for simplicity; however, compliance with this recordkeeping requirement would be determined in relation to the applicable statute (FLSA, SCA, and/or DBA).

Proposed § 23.260(b) required the contractor to permit authorized representatives of the WHD to conduct interviews of workers at the worksite during normal working hours. Proposed § 23.260(c) provided that nothing in part 23 limits or otherwise would modify a contractor's payroll and recordkeeping obligations, if any, under the FLSA, SCA, or DBA, or their implementing regulations, respectively.

Because workers covered by Executive Order 14026 are entitled to its minimum wage protections for all hours spent performing work on or in connection with a covered contract, a computation of their hours worked on or in connection with the covered contract in each workweek is essential. *See* 29 CFR 4.178. For purposes of the Executive order, the hours worked by a worker generally include all periods in which the worker is suffered or permitted to work, whether or not required to do so, and all time during which the worker is required to be on duty or to be on the employer's premises or to be at a prescribed workplace. *Id.* The hours worked which are subject to the minimum wage requirement of the Executive order are those in which the worker is engaged in performing work on or in connection with a contract subject to the Executive order. *Id.*

In the NPRM, the Department noted that in situations where contractors are not exclusively engaged in contract work covered by Executive Order 14026, and there are adequate records segregating the periods in which work was performed on or in connection with contracts subject to the order from periods in which other work was performed, the minimum wage requirement of Executive Order 14026 need not be paid for hours spent on work not covered by the order. *See* 29 CFR 4.169, 4.178, and 4.179; *see also* 79 FR 60672 (discussing the documentation of employee work not covered by Executive Order 13658). However, in the absence of records adequately segregating non-covered work from the work performed on or in connection with a covered contract, all

[23] To alleviate any potential concerns that § 23.260 might impose any new recordkeeping burdens on employers, the Department is specifically providing here the FLSA, SCA, and DBA regulatory citations from which these recordkeeping obligations are derived. The citations for all records named in the proposed rule are as follows: Name, address, and Social Security number (*see* 29 CFR 516.2(a)(1)–(2) (FLSA); 29 CFR 4.6(g)(1)(i) (SCA); 29 CFR 5.5(a)(3)(i) (DBA)); the occupation or occupations in which employed (*see* 29 CFR 516.2(a)(4) (FLSA); 29 CFR 4.6(g)(1)(ii) (SCA); 29 CFR 5.5(a)(3)(i) (DBA)); the rate or rates of wages paid to the worker (*see* 29 CFR 516.2(a)(6)(i)–(ii) (FLSA); 29 CFR 4.6(g)(1)(ii) (SCA); 29 CFR 5.5(a)(3)(i) (DBA)); the number of daily and weekly hours worked by each worker (*see* 29 CFR 516.2(a)(7) (FLSA); 29 CFR 4.6(g)(1)(iii) (SCA); 29 CFR 5.5(a)(3)(i) (DBA)); any deductions made (*see* 29 CFR 516.2(a)(10) (FLSA); 29 CFR 4.6(g)(1)(iv) (SCA); 29 CFR 5.5(a)(3)(i) (DBA)).

workers working in the establishment or department where such covered work is performed shall be presumed to have worked on or in connection with the contract during the period of its performance, unless affirmative proof establishing the contrary is presented. *Id.* Similarly, a worker performing any work on or in connection with the covered contract in a workweek shall be presumed to have continued to perform such work throughout the workweek, unless affirmative proof establishing the contrary is presented. *Id.*

The Department noted in the proposed rule that if a contractor desires to segregate covered work from non-covered work under the Executive order for purposes of applying the minimum wage established in the order, the contractor must identify such covered work accurately in its records or by other means. The Department stated its belief that the principles, processes, and practices reflected in the SCA's implementing regulations, which incorporate the principles applied under the FLSA as set forth in 29 CFR part 785, will be useful to contractors in determining and segregating hours worked on contracts with the Federal Government subject to the Executive order. *See* 29 CFR 4.169, 4.178, and 4.179; WHD FOH ¶¶ 14c07, 14g00–01.[24] In this regard, an arbitrary assignment of time on the basis of a formula, as between covered and non-covered work, is not sufficient. However, if the contractor does not wish to keep detailed hour-by-hour records for segregation purposes under the Executive order, it may be possible in certain circumstances to segregate records on the wider basis of departments, work shifts, days, or weeks in which covered work was performed. For example, if on a given day no work covered by the Executive order was performed by a contractor, that day could be segregated and shown in the records. *See* WHD FOH ¶ 14g00.

Finally, the Department noted that the Supreme Court has held that when an employer has failed to keep adequate or accurate records of employees' hours under the FLSA, employees should not effectively be penalized by denying them recovery of back wages on the ground that the precise extent of their uncompensated work cannot be established. *See Anderson* v. *Mt. Clemens Pottery Co.,* 328 U.S. 680, 687 (1946). Specifically, the Supreme Court concluded that where an employer has not maintained adequate or accurate records of hours worked, an employee need only prove that ''he has in fact performed work for which he was improperly compensated'' and produce ''sufficient evidence to show the amount and extent of that work as a matter of just and reasonable inference.'' *Id.* Once the employee establishes the amount of uncompensated work as a matter of ''just and reasonable inference,'' the burden then shifts to the employer ''to come forward with evidence of the precise amount of work performed or with evidence to negative the reasonableness of the inference to be drawn from the employee's evidence.'' *Id.* at 687–88. If the employer fails to meet this burden, the court may award damages to the employee ''even though the result be only approximate.'' *Id.* at 688. These principles for determining hours worked and accompanying back wage liability apply with equal force to the Executive order.

The Department received a few comments pertaining to the NPRM's discussion of the segregation of work that is covered by the Executive order from work that is not covered. Specifically, the AOA asserted that it would be ''absurdly unrealistic to believe that a company could pay an employee engaged in work both on and apart from a covered contract one wage for their time they spend working on or in connection with a covered contract and a different wage for the time they spend working on other activities,'' opining that ''even if it were practically feasible, the recordkeeping alone associated with doing so would be cost-prohibitive.'' The Department respectfully disagrees with this comment, as it is fairly routine for contractors subject to the SCA's and DBA's prevailing wage requirements to segregate and document employee work that is and is not covered by those laws. Indeed, the well-established recordkeeping requirements under the SCA and DBA may be more substantial than those under the order, particularly since workers on SCA- and DBA-covered contracts may perform work in multiple classifications with different prevailing wage rates. *See, e.g.,* 29 CFR 5.5(a)(1) (''Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed''). Moreover, the recordkeeping obligations imposed by Executive Order 14026 are consistent with those that already exist under Executive Order 13658. In any event, Executive Order 14026 does not require employers to pay workers a different wage rate for work that is not covered by the order, and such voluntary business practices are outside the scope of this rulemaking.

The Department therefore finalizes § 23.260 as proposed, with one technical correction to change reference from regulations ''in this chapter'' to ''in this title.''

Section 23.270 Anti-Kickback

Consistent with the regulations implementing Executive Order 13658, *see* 29 CFR 10.27, proposed § 23.270 made clear that all wages paid to workers performing on or in connection with covered contracts must be paid free and clear and without subsequent deduction (unless set forth in proposed § 23.230), rebate, or kickback on any account. Kickbacks directly or indirectly to the contractor or to another person for the contractor's benefit for the whole or part of the wage would also be prohibited. This proposal was intended to ensure full payment of the applicable Executive order minimum wage to covered workers. The Department also noted that kickbacks may be subject to civil penalties pursuant to the Anti-Kickback Act, 41 U.S.C. 8701–8707. The Department received no comments related to proposed § 23.270 and has accordingly retained the section in its proposed form.

Section 23.280 Tipped Employees

Proposed § 23.280 explained how tipped workers must be compensated under the Executive order on covered contracts. As described earlier, section 3 of Executive Order 14026 provides that, as of January 30, 2022, contractors must pay tipped workers covered by the Executive order performing on covered contracts a cash wage of at least $10.50, provided that each tipped worker receives enough tips to equal or surpass the initial $15.00 minimum wage under section 2, when combined with their cash wage. *See* 86 FR 22836. On January 1, 2023, the required minimum cash wage increases to 85 percent of the applicable minimum wage under section 2 of the Executive order, rounded to the nearest multiple of $0.05. *Id.* For subsequent years, beginning on January 1, 2024, the cash

[24] In the rulemaking implementing Executive Order 13658, the Department noted that contractors subject to the Executive order are likely already familiar with these segregation principles and should, as a matter of usual business practices, already have recordkeeping systems in place that enable the segregation of hours worked on different contracts or at different locations. 79 FR 60672, n.8. The Department further expressed its belief that such systems will enable contractors to identify and pay for hours worked subject to the Executive order without having to employ additional systems or processes. *Id.*

wage for tipped employees is 100 percent of the applicable Executive Order 14026 minimum wage—*i.e.,* eliminating a contractor's ability to claim a tip credit under Executive Order 14026. *Id.* When a contractor is using a tip credit to meet a portion of its wage obligations under the Executive order, the amount of tips received by the employee must equal at least the difference between the required cash wage paid and the Executive order minimum wage. If the employee does not receive sufficient tips, the contractor must increase the cash wage paid so that the cash wage in combination with the tips received equals the Executive order minimum wage. *Id.*

For purposes of Executive Order 14026 and part 23, tipped workers (or tipped employees) are defined by section 3(t) of the FLSA. *See* 29 U.S.C. 203(t). The FLSA defines a tipped employee as ''any employee engaged in an occupation in which he customarily and regularly receives more than $30 a month in tips.'' *Id.* Section 3 of the Executive order sets forth a wage payment method for tipped employees that is similar to the tipped employee wage provision of the FLSA. 29 U.S.C. 203(m)(2)(A). As with the FLSA's ''tip credit'' provision, the Executive order permits contractors to take a partial credit against their wage payment obligation to a tipped employee under the order based on tips received by the employee, until the Executive Order 14026 tip credit is phased out on January 1, 2024. In other words, the wage paid to a tipped employee to satisfy the Executive Order 14026 minimum wage comprises both the cash wage paid under section 3(a) of the Executive order and the amount of tips used for the tip credit, which is limited to the difference between the cash wage paid and the Executive order minimum wage. Because contractors with a contract subject to the Executive order may be required by the SCA or any other applicable law or regulation to pay a cash wage in excess of the Executive order minimum wage, section 3(b) of the order provides that in such circumstances contractors must pay the difference between the Executive order minimum wage and the higher required wage in cash to the tipped employees and may not make up the difference with additional tip credit. *See* 86 FR 22836.

In the proposed regulations implementing section 3 of the Executive order, the Department set forth principles and procedures that closely follow the FLSA requirements for payment of tipped employees with which employers are already familiar. This was consistent with the directive in section 4(c) of the Executive order that regulations issued pursuant to the order should, to the extent practicable, incorporate existing principles and procedures from the FLSA, SCA, and DBA. *See* 86 FR 22836.

Proposed § 23.280(a) set forth the provisions of section 3 of the Executive order explaining how contractors can meet their wage payment obligations under section 2 for tipped employees. Under no circumstances may a contractor claim a higher tip credit than the difference between the required cash wage and the Executive order minimum wage to meet its minimum wage obligations; contractors may, however, pay a higher cash wage than required by section 3 and claim a lower tip credit. Because the sum of the cash wage paid and the tip credit equals the Executive order minimum wage, any increase in the amount of the cash wage paid will result in a corresponding decrease in the amount of tip credit that may be claimed, except as provided in proposed § 23.280(a)(4). For example, if on January 30, 2022, a contractor on a contract subject to the Executive order paid a tipped worker a cash wage of $11.50 per hour instead of the minimum requirement of $10.50, the contractor would only be able to claim a tip credit of $3.50 per hour to reach the $15.00 Executive order minimum wage. If the tipped employee does not receive sufficient tips in the workweek to equal the amount of the tip credit claimed, the contractor must increase the cash wage paid so that the amount of cash wage paid and tips received by the employee equal the section 2 minimum wage for all hours in the workweek. To clarify, contractors with tipped employees do not need to claim a tip credit; contractors can comply with Executive Order 14026 by simply paying their tipped employees a cash wage that meets or exceeds the applicable minimum wage rate, including the $15.00 per hour rate in effect in 2022.

Proposed § 23.280(a)(3) of the regulations made clear that a contractor may pay a higher cash wage than required by subsection (3)(a)(i) of the Executive order—and claim a correspondingly lower tip credit—but may not pay a lower cash wage than that required by section 3(a)(i) of the Executive order and claim a higher tip credit. In order for the contractor to claim a tip credit the employee must receive tips equal to at least the amount of the credit claimed. If the employee receives less in tips than the amount of the credit claimed, the contractor must pay the additional cash wages necessary to ensure the employee receives the Executive order minimum wage in effect under section 2 on the regular pay day.

Proposed § 23.280(a)(4) explained a contractors' wage payment obligation when the cash wage required to be paid under the SCA or any other applicable law or regulation is higher than the Executive order minimum wage. In such circumstances, the contractor must pay the tipped employee additional cash wages equal to the difference between the Executive order minimum wage and the highest wage required to be paid by other applicable state or Federal law or regulation. This additional cash wage is on top of the cash wage paid under proposed § 23.280(a)(1) and any tip credit claimed. Unlike raising the cash wage paid under § 23.280(a)(1), additional cash wages paid under proposed § 23.280(a)(4) would not impact the calculation of the amount of tip credit the employer may claim.

Proposed § 23.280(c) provided that the same definitions and requirements set forth in 29 CFR 10.28(b)–(f) generally apply with respect to tipped employees performing on or in connection with covered contracts under this Executive order.[25] These definitions and requirements address the tip credit, the characteristics of tips, service charges, tip pooling, and notice. To the extent that § 10.28(f) requires that an employer provide notice of the ''amount of the cash wage that is to be paid by the employer, which cannot be lower than the cash wage required by paragraph (a)(1) of this section,'' the proposed regulation specified that the minimum required cash wage shall be the minimum required cash wage described in proposed § 23.280(a)(1), rather than in § 10.28(a)(1). The definitions and requirements incorporated in § 23.280(b) generally follow definitions and requirements under the FLSA, and are familiar to employers of tipped employees generally, as well as to employers subject to § 10.28.

The Department received numerous comments regarding the Executive order's treatment of tipped employees, but few comments specifically relevant to proposed § 23.280. For example, the AFL–CIO, the SEIU, and the Teamsters commended the order for ''ensuring that tipped workers receive more predictable and reliable cash wages in addition to tips,'' which they asserted would ''promot[e] the Order's policies in support of increased employee productivity and morale and reducing turnover and absenteeism.'' Other

[25] On June 23, 2021, the Department issued a notice of proposed rulemaking, Tip Regulations Under the Fair Labor Standards Act (FLSA); Partial Withdrawal, proposing changes to 29 CFR 10.28(b).

worker advocacy groups, including A Better Balance, One Fair Wage, ROC United, and Workplace Fairness, asserted that the Executive order's phase-out of the tip credit constituted a step towards ending ''long standing discriminatory practices'' in federal contracting. Similarly, one commenter who identified themselves as a tipped employee wrote that ''[t]ipping for services keeps folks impoverished, propagates racial and gender inequities and makes restaurants undesirable places to work.'' By contrast, the National Park Hospitality Association asserted that ''increasing the base wage of tipped employees may result in concessioners having to increase wages of many other employees currently paid more than minimum wage to reflect the higher total amount received by tipped employees,'' which they alleged would result in higher costs for visitors to national parks. As mentioned earlier, the Chamber asserted that the Executive order's phase-out of the tip credit on covered contracts conflicts with the FLSA because it ''would eliminate the credit employers are allowed to take in compensating tipped employees'' under the FLSA.

Comments addressing the alleged conflict between the FLSA and Executive Order 14026 with respect to the treatment of tipped employees are addressed elsewhere in this final rule. The Department notes, however, that it does not have the discretion to deviate from the explicit terms of the Executive order, including its gradual phase-out of the tip credit for covered workers who receive tips.

Specific to the proposed regulatory language in § 23.280, the AFL–CIO, the SEIU, and the Teamsters commented favorably upon proposed § 23.280 for ''set[ing] forth procedures that mirror the FLSA's requirements for the payment of tipped employees,'' which they opined ''will facilitate compliance with the Order's requirements.'' The Department did not otherwise receive comments germane to proposed § 23.280, and has finalized the provision as proposed.

Section 23.290 Notice

As discussed earlier in the preamble section for § 23.120(c) in subpart B, proposed § 23.290 required that contractors notify all workers performing on or in connection with a covered contract of the applicable minimum wage rate under Executive Order 14026. The regulations implementing the FLSA, SCA, DBA, and Executive Order 13658 each contain separate notice requirements for the employers covered by those laws, so the Department stated its belief that a similar notice requirement is necessary for effective implementation of the Executive order. *See, e.g.,* 29 CFR 516.4 (FLSA); 29 CFR 4.6(e) (SCA); 29 CFR 5.5(a)(1)(i) (DBA); 29 CFR 10.29 (Executive Order 13658). Because the Executive Order 14026 minimum wage rate will increase annually based on inflation, the Department proposed to require contractors to provide notice on at least an annual basis of the currently applicable rate. Moreover, in the proposed rule, the Department strongly encouraged contractors to engage in regular outreach to workers performing on or in connection with covered contracts, particularly in the time period immediately before and after the annual minimum wage increase, to ensure such workers are aware of their rights and the wages to which they are entitled.

Consistent with the regulations implementing Executive Order 13658, *see* 29 CFR 10.29, the Department explained that contractors could satisfy this proposed notice requirement in a variety of ways. For example, with respect to service employees on contracts covered by the SCA and laborers and mechanics on contracts covered by the DBA, proposed § 23.290(a) clarified that contractors may meet the notice requirement by posting, in a prominent and accessible place at the worksite, the applicable wage determination.[26] As stated earlier, the Department intends to publish a prominent general notice on all SCA and DBA wage determinations informing workers of the applicable Executive order minimum wage rate, to be updated on an annual basis in the event of any inflation-based increases to the rate pursuant to § 23.50(b)(2). Because contractors covered by the SCA and DBA are already required to display the applicable wage determination in a prominent and accessible place at the worksite pursuant to those statutes, *see* 29 CFR 4.6(e) (SCA), 29 CFR 5.5(a)(1)(i) (DBA), the Department explained that the notice requirement in proposed § 23.290 would not impose any additional burden on contractors with respect to those workers already covered by the SCA, DBA, or Executive Order 13658.

Proposed § 23.290(b) provided that contractors with FLSA-covered workers performing on or in connection with a covered contract could satisfy the notice requirement by displaying a poster provided by the Department of Labor in a prominent or accessible place at the worksite. The Department explained that this poster would be appropriate for contractors with FLSA-covered workers performing work ''in connection with'' a covered SCA or DBA contract, as well as for contractors with FLSA-covered workers performing on or in connection with concessions contracts and contracts in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public. The Department expressed its intent to make the poster available on the WHD website and provide the poster in a variety of languages. The Department noted that the poster would be updated annually to reflect any inflation-based increases to the Executive Order 14026 minimum wage rate that is published by the Department, and that contractors must display the currently applicable poster.

Finally, proposed § 23.290(c) provided that contractors that customarily post notices to workers electronically may post the notice required by this section electronically, provided that such electronic posting is displayed prominently on any website that is maintained by the contractor, whether external or internal, and is customarily used for notices to workers about terms and conditions of employment. The Department explained that this kind of an electronic notice could be made in lieu of physically displaying the notice poster in a prominent or accessible place at the worksite.

As discussed earlier in the preamble section for proposed § 23.30, some FLSA-covered workers performing ''in connection with'' a covered contract may not work at the site of the work with other covered workers. The NPRM explained that these covered off-site workers would nonetheless be entitled to adequate notice of the Executive order minimum wage rate under proposed § 23.290. For example, an off-site administrative assistant spending more than 20 percent of her weekly work hours processing paperwork for a DBA-covered contract would be entitled to notice under this section separate from the physical posting of the DBA wage determination at the main worksite where the DBA-covered laborers and mechanics perform ''on'' the contract. The Department proposed

[26] SCA contractors are required by 29 CFR 4.6(e) to notify workers of the minimum monetary wage and any fringe benefits required to be paid, or to post the wage determination for the contract. DBA contractors similarly are required by 29 CFR 5.5(a)(1)(i) to post the DBA wage determination and a poster at the site of the work in a prominent and accessible place where they can be easily seen by the workers. The Department noted in the NPRM that SCA and DBA contractors may use these same methods to notify workers of the Executive order minimum wage under proposed § 23.290.

that contractors must notify these off-site workers of the Executive order minimum wage rate, either by displaying the poster for FLSA-covered workers described in proposed § 23.290(b) at the off-site worker's location, or if they customarily post notices to workers electronically, by providing an electronic notice that meets the criteria described in proposed § 23.290(c).

The Department further noted that contractors may have additional obligations under other laws, such as the Americans with Disabilities Act of 1990, to ensure that the notice required by proposed part 23 is provided in an accessible format to workers with disabilities.

The Department anticipated that this proposed notice requirement would not impose a significant burden on contractors. As mentioned earlier, contractors are already required to notify workers of the required minimum wage and/or to display the applicable wage determination for workers covered by the SCA, DBA, or Executive Order 13658 in a prominent and accessible place at the worksite. To the extent that proposed § 23.290 imposed a new notice requirement with respect to workers whose wages are governed by the FLSA but were not covered by Executive Order 13658, the Department explained that such a requirement is not significantly different from the existing notice requirement for FLSA-covered workers provided at 29 CFR 516.4, which requires employers to post a notice explaining the FLSA in conspicuous places in every establishment where such employees are employed. Moreover, the Department stated it would update and provide the Executive Order 14026 minimum wage poster. The Department noted that, if display of the poster is necessary at more than one site in order to ensure that it is seen by all workers performing on or in connection with covered contracts, additional copies of the poster could be obtained without cost from the Department. Moreover, as discussed above, the Department proposed to permit contractors that customarily post notices electronically to use electronic posting of the notice. The Department explained that its experience enforcing the FLSA, SCA, and DBA indicated that this notice provision would serve an important role in obtaining and maintaining contractor compliance with the Executive order.

The Department received numerous comments from worker advocacy organizations who asserted that ''[i]n addition to the posting suggested by the proposed rules, there should be opportunities to fully educate employers on their responsibilities and workers on their rights.'' These commenters did not provide specific suggestions to further educate workers and employers regarding their rights and obligations under Executive Order 14026 beyond the notice requirement provided in proposed § 23.290. However, the Department fully intends to engage with contractors, industry associations, worker advocacy groups, and other members of the public about the requirements of Executive Order 14026, just as it has in implementing and enforcing Executive Order 13658.

The NSAA requested the Department to ''create notices and posters specific to seasonal employers that reference that [the order's] minimum wage rate may not apply to employees if they are exempt under the seasonal recreation exemption under FLSA 29 U.S.C. 213(a) *et seq.,*'' which they asserted would ''eliminate employee confusion and prevent unnecessary or unauthorized claims against employers who are legally exempt from this Executive Order.'' The Department declines this request. Given the breadth of industries, contractors, workers, and job classifications covered by Executive Order 14026, the Department believes that compliance with the order is best promoted by providing a single uniform poster explaining worker rights under Executive Order 14026 in order to ensure that affected workers are being notified of the most important information that they need to know regarding their rights. It would be infeasible for the Department to create separate industry-specific posters for all potentially affected contractors and could be confusing for stakeholders to know which poster would be most appropriate for their particular circumstances. Moreover, the Department notes that the Executive Order 14026 poster appropriately advises that the order ''may not apply to certain . . . occupations and workers.'' This language is sufficient to alert both contractors and workers that they may need to reach out to the WHD for further compliance assistance if they have questions; the poster also provides the WHD's contact information.

Having received no other comments in response to proposed § 23.290 and its notice requirement, the Department finalizes the provision as proposed. However, the Department made a number of non-substantive edits to the Executive Order 14026 poster that published in the NPRM, to improve the poster's readability. An image of the revised Executive Order 14026 poster is included as an appendix to this final rule and will be available on the WHD website.

Subpart D Enforcement

Section 5 of Executive Order 14026, titled ''Enforcement,'' grants the Secretary ''authority for investigating potential violations of and obtaining compliance with th[e] order.'' 86 FR 22836. Section 4(c) of the order directs that the regulations issued by the Secretary should, to the extent practicable, incorporate existing definitions, principles, procedures, remedies, and enforcement processes under the FLSA, SCA, DBA, Executive Order 13658, and the regulations issued to implement Executive Order 13658. *Id.*

In accordance with these requirements, subpart D of part 23 is consistent with the analogous subpart of the implementing regulations for Executive Order 13658, *see* 29 CFR 10.41 through 10.44, and incorporates FLSA, SCA, and DBA remedies, procedures, and enforcement processes that the Department believes will facilitate investigations of potential violations of the order, address and remedy violations of the order, and promote compliance with the order. Most of the enforcement procedures and remedies contained in part 23 accordingly are based on the implementing regulations for Executive Order 13658, which in turn were based on the statutory text or implementing regulations of the DBA, FLSA, and SCA.

Section 23.410 Complaints

The Department proposed a procedure for filing complaints in proposed § 23.410. Proposed § 23.410(a) outlined the procedure to file a complaint with any office of the WHD. It additionally provided that a complaint may be filed orally or in writing and that the WHD will accept a complaint in any language. Proposed § 23.410(b) stated the well-established policy of the Department with respect to confidential sources. *See* 29 CFR 4.191(a); 29 CFR 5.6(a)(5).

Maximus commented that only a current or former employee or an employee's legally recognized representative should be allowed to file a complaint under this provision. As discussed earlier in the preamble to § 23.110(d), the Department declines to adopt this limitation. Section 23.410, as proposed, is identical to the corresponding provision in the regulations implementing Executive Order 13658, which was in turn based on the regulations implementing the SCA. Thus, the Department believes that this provision, as proposed, is

consistent with the Executive order's instruction to incorporate existing procedures and enforcement remedies under the SCA and the regulations issued to implement Executive Order 13658.

The Department appreciates Maximus' concern that there will be ''spurious, meritless'' claims if the complaint process is opened up to those without a current or former employment relationship. However, in the Department's enforcement experience under identical or nearly identical complaint provisions, the Department has not experienced a high volume of spurious or meritless complaints. Moreover, the Department accepts third party wage and hour complaints because the Department understands that some workers may be reluctant to file a complaint on their own behalf. The Department believes that allowing those without a current or former employment relationship to file complaints will ensure effective enforcement of and compliance with Executive Order 14026. Therefore, while the Department appreciates the commenter's recommendation, it declines to adopt Maximus' suggestion.

NELA commented that within 30 days of any employee complaint regarding work on a covered contract for which an employee was improperly compensated, the Department should automatically send a letter to the contractor seeking a response to the allegations and documentary evidence that the contractor had in fact paid the Executive order minimum wage. While the Department appreciates NELA's suggestion, as the Department always endeavours to improve internal processes, the conduct of WHD's internal management of complaints and any responses to those complaints is more properly addressed in internal enforcement directives or subregulatory guidance. In addition, the provision, as proposed, is identical to the corresponding provision in the final rule implementing Executive Order 13658. The Department believes that the corresponding provision under Executive Order 13658 has worked well to effectuate that order's intent, and should thus be retained in this rulemaking.

For the reasons explained above, the Department has adopted § 23.410 as proposed.

Section 23.420 Wage and Hour Division Conciliation

The Department proposed in § 23.420 to establish an informal complaint resolution process for complaints filed with the WHD. The provision would allow the WHD, after obtaining the necessary information from the complainant regarding the alleged violations, to contact the party against whom the complaint is lodged and attempt to reach an acceptable resolution through conciliation. The Department received no comments pertinent to § 23.420 and has adopted the section as proposed.

Section 23.430 Wage and Hour Division Investigation

Proposed § 23.430, which outlined WHD's investigative authority, would permit the Administrator to initiate an investigation either as the result of a complaint or at any time on his or her own initiative. As part of the investigation, the Administrator would be able to inspect the relevant records of the applicable contractors (and make copies or transcriptions thereof) as well as interview the contractors. The Administrator would additionally be able to interview any of the contractors' workers at the worksite during normal work hours, and require the production of any documentary or other evidence deemed necessary for inspection to determine whether a violation of part 23 (including conduct warranting imposition of debarment) has occurred. The section would also require Federal agencies and contractors to cooperate with authorized representatives of the Department in the inspection of records, in interviews with workers, and in all aspects of investigations.

Maximus commented that the Department should add language that any investigations, inspections, and interviews ''be produced no earlier than two business weeks from the date the notice of complaint is received by the contractor, as opposed to when postmarked/date of letter sent by the WHD to the contractor.'' While the Department appreciates the suggestion, this section does not set time frames for investigations, inspections, and interviews because such particulars of WHD's investigative procedures are most appropriately established outside the rulemaking process, and the Administrator's ability to initiate investigations is not contingent upon receipt of a complaint. Instead, pursuant to this section, the Administrator can initiate an investigation at any time on his or her own initiative. In addition, the enforcement provisions of the regulations implementing the DBA, FLSA, SCA, and Executive Order 13658 do not provide details regarding when investigations, inspections, and interviews under those authorities will occur. Thus, the Department believes that this provision is consistent with the Executive order's directive to incorporate existing procedures and enforcement processes under the DBA, FLSA, SCA, and Executive Order 13658.

For the reasons explained above, the Department has adopted § 23.430 as proposed.

Section 23.440 Remedies and Sanctions

The Department proposed remedies and sanctions to assist in enforcement of the Executive order in § 23.440. Proposed § 23.440(a), provided that when the Administrator determines a contractor has failed to pay the Executive order's minimum wage to workers, the Administrator will notify the contractor and the applicable contracting agency of the violation and request the contractor to remedy the violation. It additionally stated that if the contractor does not remedy the violation, the Administrator would direct the contractor to pay all unpaid wages identified in the Administrator's investigative findings letter issued pursuant to proposed § 23.510. Proposed § 23.440(a) further provided that the Administrator could additionally direct that payments due on the contract or any other contract between the contractor and the Government be withheld as necessary to pay unpaid wages, and that, upon the final order of the Secretary that unpaid wages are due, the Administrator may direct the relevant contracting agency to transfer the withheld funds to the Department for disbursement. To the extent the Department received comments specifically related to withholding, it has discussed them in the preamble to § 23.110(c). Because the Department received no comments directly related to § 23.440(a), the final rule adopts the section as proposed.

Proposed § 23.440(b), which the Department derived from the FLSA's antiretaliation provision set forth at 29 U.S.C. 215(a)(3), stated that the Administrator could provide for any relief appropriate, including employment, reinstatement, promotion and payment of lost wages, when the Administrator determined that any person had discharged or in any other manner discriminated against a worker because such worker had filed any complaint or instituted or caused to be instituted any proceeding under or related to Executive Order 14026 or part 23, or had testified or was about to testify in any such proceeding. *See* 29 U.S.C. 215(a)(3), 216(b). Consistent with the Supreme Court's observation in interpreting the scope of the FLSA's antiretaliation provision, enforcement of Executive Order 14026 will depend

''upon information and complaints received from employees seeking to vindicate rights claimed to have been denied.'' *Kasten,* 563 U.S. at 11 (internal quotation marks omitted). For the reasons described in the preamble to subpart A, the Department believes that this antiretaliation provision will promote and ensure effective compliance with the Executive order, and has accordingly retained the provision as proposed.

Proposed § 23.440(c) provided that if the Secretary determines a contractor has disregarded its obligations to workers under the Executive order or part 23, a standard the Department derived from the DBA implementing regulations at 29 CFR 5.12(a)(2), the Secretary would order that the contractor and its responsible officers, and any firm, corporation, partnership, or association in which the contractor or responsible officers have an interest, will be ineligible to be awarded any contract or subcontract subject to the Executive order for a period of up to three years from the date of publication of the name of the contractor or responsible officer on the ineligible list. Proposed § 23.440(c) further provided that neither an order for debarment of any contractor or responsible officer from further Government contracts nor the inclusion of a contractor or its responsible officers on a published list of noncomplying contractors under this section will be carried out without affording the contractor or responsible officers an opportunity for a hearing before an Administrative Law Judge.

As the DBA, SCA, and the regulations implementing Executive Order 13658 contain debarment provisions, inclusion of a debarment provision in this final rule reflects both the Executive order's instruction that the Department incorporate remedies from the DBA, FLSA, SCA, and the regulations implementing Executive Order 13658 to the extent practicable and the Executive order's conferral of authority on the Secretary to adopt an enforcement scheme that will both remedy violations and obtain compliance with the order. Debarment is a long-established remedy for a contractor's failure to fulfill its labor standard obligations under the DBA and the SCA. 41 U.S.C. 6706(b); 40 U.S.C. 3144(b); 29 CFR 4.188(a); 29 CFR 5.5(a)(7); 29 CFR 5.12(a)(2). The possibility that a contractor will be unable to obtain Government contracts for a fixed period of time due to debarment promotes contractor compliance with the DBA and the SCA, and, as similarly expressed in the rulemaking implementing Executive Order 13658, the Department expects such a remedy will enhance contractor compliance with Executive Order 14026. Since debarment to promote contractor compliance is among the remedies in the Government contract statutes that the Executive order instructs the Department to incorporate, the Department has also included debarment as a remedy for certain violations of the Executive order by covered contractors.

AGC recommended that the final rule include ''knowingly or recklessly'' in front of the term ''disregard'' throughout § 23.520. The commenter expressed concern that, without this limitation, the provision could lead to debarment proceedings involving ''minor or inadvertent mistakes.'' As the NPRM stated, the Department originally derived the ''disregard of obligations'' standard from the DBA's implementing regulations, and the Department used this standard in the final rule implementing Executive Order 13658, *see* 29 CFR 10.52. The Administrative Review Board (ARB) interprets this standard to require a level of culpability beyond mere negligence in order to justify debarment. *See, e.g., Thermodyn Mech. Contractors, Inc.,* ARB Case No. 96–116, 1996 WL 697838, at *4 (ARB Oct. 25, 1996) (noting that ''[t]o support a debarment order, the evidence must establish a level of culpability beyond mere negligence''). The Department intends for the same standard to apply under this Executive order. The requirement to show some form of culpability beyond mere negligence confirms this debarment standard is not one involving strict liability. However, for example, a showing of ''knowing or reckless'' disregard of obligations is not necessary in order to justify a debarment. Adopting a ''knowing or reckless disregard'' standard would constitute a departure from the DBA's debarment standard as well as from the SCA's debarment standard (under which debarment is warranted for SCA violations unless the Secretary of Labor recommends otherwise because of ususual circumstances), and would therefore be inconsistent with the Executive order's directive to adopt remedies and enforcement processes from the DBA, FLSA, SCA, and the regulations implementing Executive Order 13658 to the extent practicable. The Department accordingly declines to adopt AGC's request to require a showing of ''knowing or reckless'' disregard to justify debarment under Executive Order 14026.

One individual commenter requested clarification whether an individual or firm debarred under this part may request removal from the ineligible list after six months from the date the person or firm's name appears on the ineligible list. This commenter observed that this right exists when the Secretary has debarred a contractor for aggravated or willful violations of the labor standards provisions of the applicable statutes listed in 29 CFR 5.1 other than the DBA (''Davis-Bacon Related Acts''). 29 CFR 5.12(c). The commenter stated that such a provision ''discourages compliance'' and should not be included in the rule. In response to this comment, the Department clarifies that, as was true for the NPRM, the final rule does not contain a provision such as the one applicable to the Davis-Bacon Related Acts, and that those debarred pursuant to this part do not have the right to request removal from the debarment list after six months. As this right does not exist under the DBA, SCA, or regulations implementing Executive Order 13658, the Department's decision not to create such a right is consistent with the Executive order's instruction to incorporate existing principles, remedies, and enforcement processes under the DBA, SCA, and regulations implementing Executive Order 13658. In addition, the Department believes that debarment is an important enforcement mechanism under the DBA, SCA, and Executive Order 13658; thus, the Department does not see reason to depart from those regulatory schemes.

ABC sought a ''safe harbor'' from debarment for contractors that can demonstrate their wages are in compliance with the DBA, FLSA, and SCA. Debarment, as discussed above, is an important remedy to obtain compliance with the Executive order, and is a remedy that exists without a safe harbor provision under the DBA, SCA, and the regulations implementing Executive Order 13658. Moreover, as discussed previously, the minimum wage requirements of Executive Order 14026 are separate and distinct legal obligations from the prevailing wage requirements of the DBA and SCA; a contractor's compliance with the DBA or SCA therefore does not absolve it of responsibility to also comply with Executive Order 14026 on covered contracts. The Department is accordingly unwilling to provide a waiver from a possible debarment remedy for violations of the Executive order.

The Department therefore adopts proposed 23.440(c) in this final rule without change.

Proposed § 23.440(d), which was identical to 29 CFR 10.44(d), which the Department had in turn derived from the SCA, 41 U.S.C. 6705(b)(2), would

allow for initiation of an action, following a final order of the Secretary, against a contractor in any court of competent jurisdiction to collect underpayments when the amounts withheld under § 23.110(c) are insufficient to reimburse workers' lost wages. Proposed § 23.440(d) would also authorize initiation of an action, following the final order of the Secretary, in any court of competent jurisdiction when there are no payments available to withhold. This is particularly necessary because the Executive order covers concessions and other contracts under which the contractor may not receive payments from the Federal Government and in some instances, the Administrator may be unable to direct withholding of funds because at the time the Administrator discovers that a contractor owes wages to workers, it may be that no payments remain owing under the contract or another contract between the same contractor and the Federal Government. With respect to such contractors, there will be no funds to withhold. Proposed § 23.440(d) accordingly provided that the Department may pursue an action in any court of competent jurisdiction to collect underpayments against such contractors. Proposed § 23.440(d) additionally provided that any sums the Department recovers would be paid to affected workers to the extent possible, but that sums not paid to workers because of an inability to do so within three years would be transferred into the Treasury of the United States. The Department received no comments on proposed § 23.440(d) and has adopted the language as proposed.

In proposed § 23.440(e), the Department addressed what remedy will be available when a contracting agency fails to include the contract clause in a contract subject to the Executive order. The section provided that the contracting agency will, on its own initiative or within 15 calendar days of notification by the Department, incorporate the clause retroactive to commencement of performance under the contract through the exercise of any and all authority necessary. As the NPRM noted, this incorporation would provide the Administrator authority to collect underpayments on behalf of affected workers on the applicable contract retroactive to commencement of performance under the contract. The NPRM noted that the Administrator possesses comparable authority under the DBA, 29 CFR 1.6(f), and that the Department believed a similar mechanism for addressing a failure to include the contract clause in a contract subject to the Executive order will further the interest in both remedying violations and obtaining compliance with the Executive order. The Department did not receive comments relating to this section and has therefore adopted the language as proposed.

Proposed § 23.440(e) also reflected that a contractor is entitled to an adjustment when a contracting agency initially omits and then subsequently includes the contract clause in a covered contract. This approach is consistent with the SCA's implementing regulations, *see* 29 CFR 4.5(c) and the regulations implementing Executive Order 13658. The Department recognizes that the mechanics of effectuating such an adjustment may differ between covered procurement contracts and the non-procurement contracts that the Department's contract clause covers. With respect to covered non-procurement contracts, the Department believes that the authority conferred on agencies that enter into such contracts under section 4(b) of the Executive order includes the authority to provide such an adjustment.

The Department believes that the remedies it proposed in its NPRM and adopts here will be sufficient to obtain compliance with the Executive order.

The AOA asked the Department to clarify whether contractors have any obligations with respect to enforcement and compliance by any subcontractor other than including the required contract clause in any covered subcontract. The Department reiterates, as it noted in the NPRM, its intent to follow the general practice of holding contractors responsible for compliance by any covered lower-tier subcontractor(s) with the Executive order minimum wage. In other words, a contractor's responsibility for compliance flows down to all covered lower-tier subcontractors. Thus, to the extent a lower-tier subcontractor fails to pay its workers the applicable Executive order minimum wage even though its subcontract contains the required contract clause, an upper-tier contractor may still be responsible for any back wages owed to the workers. Similarly, a contractor's failure to fulfill its responsibility for compliance by covered lower-tier subcontractors may warrant debarment if the contractor's failure constituted a disregard of obligations to workers and/or subcontractors. For example, a contractor that included the contract clause in a subcontract but then purposely ignored clear violations of the minimum wage requirements of Executive Order 14026 and this part by its subcontractor, despite actual knowledge of those violations, would not have fulfilled its obligations under the Executive order and this part. The Department notes that its general practice under the DBA and SCA is to seek payment of back wages from the subcontractor that directly committed the violation before seeking payment from the prime contractor or any other upper-tier subcontractors.

The Department's experience under the DBA, SCA, and Executive Order 13658 has demonstrated that the ''flow-down'' model is an effective means to obtain compliance. As the Executive order charges the Department with the obligation to adopt remedies and enforcement processes from the DBA, SCA, and Executive Order 13658's implementing regulations (and/or FLSA) to obtain compliance with the order, the final rule reflects the flow-down approach to compliance responsibility contained in the DBA, SCA, and Executive Order 13658 regulations.

Finally, as noted in the preamble section for subpart A, the Executive order covers certain non-procurement contracts. Because the FAR does not apply to all contracts covered by Executive Order 14026, there will be instances where, pursuant to section 4(b) of the Executive order, a contracting agency must take steps to the extent permitted by law, including but not limited to insertion of the contract clause set forth in Appendix A, to exercise any applicable authority to ensure that covered contracts as described in sections 8(a)(i)(C) and (D) of the Executive order comply with the requirements set forth in sections 2 and 3 of the Executive order, including payment of the Executive order minimum wage. In such instances, the enforcement provisions contained in subpart D (as well as the remainder of part 23) would fully apply to the covered contract, consistent with the Secretary's authority under section 5 of the Executive order to investigate potential violations of, and obtain compliance with, the order.

Subpart E—Administrative Proceedings

Section 5 of Executive Order 14026, titled ''Enforcement,'' grants the Secretary ''authority for investigating potential violations of and obtaining compliance with th[e] order.'' 86 FR 22836. Section 4(c) of the order directs that the regulations the Secretary issues should, to the extent practicable, incorporate existing definitions, principles, procedures, remedies, and enforcement processes under the FLSA, SCA, and DBA, and regulations issued

to implement Executive Order 13658. *Id.*

Accordingly, subpart E of part 23 incorporates, to the extent practicable, the DBA and SCA administrative procedures that the regulations issued to implement Executive Order 13658 also incorporated, which are necessary to remedy potential violations and ensure compliance with the Executive order. Thus, the administrative procedures in this subpart are identical to the administrative procedures in the regulations issued to implement Executive Order 13658. The administrative procedures included in this subpart also closely adhere to existing procedures of the Office of Administrative Law Judges and the Administrative Review Board.

Section 23.510 Disputes Concerning Contractor Compliance

Proposed § 23.510, which the Department derived primarily from 29 CFR 5.11, addressed how the Administrator will process disputes regarding a contractor's compliance with part 23. Proposed § 23.510(a) provided that the Administrator or a contractor may initiate a proceeding covered by § 23.510. Proposed § 23.510(b)(1) provided that when it appears that relevant facts are at issue in a dispute covered by § 23.510(a), the Administrator will notify the affected contractor (and the prime contractor, if different) of the investigation's findings by certified mail to the last known address. Pursuant to the NPRM, if the Administrator determined there were reasonable grounds to believe the contractor should be subject to debarment, the investigative findings letter would so indicate. The Department did not receive any comments on proposed § 23.510. The final rule therefore adopts the section as proposed.

Proposed § 23.510(b)(2) provided that a contractor desiring a hearing concerning the investigative findings letter is required to request a hearing by letter postmarked within 30 calendar days of the date of the Administrator's letter. It further required the request set forth those findings which are in dispute with respect to the violation(s) and/or debarment, as appropriate, and to explain how such findings are in dispute, including by reference to any applicable affirmative defenses. The Department received no comments on proposed § 23.510(b)(2) and adopts the language as proposed.

Proposed § 23.510(b)(3) provided that the Administrator, upon receipt of a timely request for hearing, will refer the matter to the Chief Administrative Law Judge (ALJ) by Order of Reference for designation of an ALJ to conduct such hearings as may be necessary to resolve the disputed matter in accordance with the procedures set forth in 29 CFR part 6. It also required the Administrator to attach a copy of the Administrator's letter, and the response thereto, to the Order of Reference that the Administrator sends to the Chief ALJ. The Department did not receive any comments on this proposed provision. The final rule therefore adopts the provision as proposed.

Proposed § 23.510(c)(1) would apply when it appears there are no relevant facts at issue and there was not at that time reasonable cause to institute debarment proceedings. It required the Administrator to notify the contractor, by certified mail to the last known address, of the investigative findings and to issue a ruling on any issues of law known to be in dispute. Proposed § 23.510(c)(2)(i) would apply when a contractor disagrees with the Administrator's factual findings or believes there are relevant facts in dispute. It allowed the contractor to advise the Administrator of such disagreement by letter postmarked within 30 calendar days of the date of the Administrator's letter, and required that the response explain in detail the facts alleged to be in dispute and attach any supporting documentation. The Department did not receive any comments on this proposed provision. The final rule therefore adopts the provision as proposed.

Proposed § 23.510(c)(2)(ii) required the Administrator to examine the information timely submitted in the response alleging the existence of a factual dispute. Where the Administrator determines there is a relevant issue of fact, the Administrator will refer the case to the Chief ALJ as under § 23.510(b)(3). If the Administrator determines there is no relevant issue of fact, the Administrator will so rule and advise the contractor(s) accordingly. The Department did not receive any comments on this proposed provision. The final rule therefore adopts the provision as proposed.

Proposed § 23.510(d) provided that the Administrator's investigative findings letter becomes the final order of the Secretary if a timely response to the letter was not made or a timely petition for review was not filed. It additionally provided that if a timely response or a timely petition for review was filed, the investigative findings letter would be inoperative unless and until the decision is upheld by the ALJ or the ARB, or the letter otherwise became a final order of the Secretary. The Department received no comments on this provision and the final rule adopts the provision as proposed.

Section 23.520 Debarment Proceedings

Proposed § 23.520, which the Department primarily derived in the Executive Order 13658 rulemaking from 29 CFR 5.12, *see* 79 FR 60683, addressed debarment proceedings. Proposed § 23.520(a) provided that whenever any contractor is found by the Administrator to have disregarded its obligations to workers or subcontractors under Executive Order 14026 or part 23, such contractor and its responsible officers, and/or any firm, corporation, partnership, or association in which such contractor or responsible officers have an interest, will be ineligible for a period of up to three years to receive any contracts or subcontracts subject to the Executive order from the date of publication of the name or names of the contractor or persons on the ineligible list.

Proposed § 23.520(b)(1) provided that where the Administrator finds reasonable cause to believe a contractor has committed a violation of the Executive order or part 23 that constitutes a disregard of its obligations to its workers or subcontractors, the Administrator will notify by certified mail to the last known address the contractor and its responsible officers (and/or any firms, corporations, partnerships, or associations in which the contractor or responsible officers are known to have an interest) of the finding. Pursuant to proposed § 23.520(b)(1), the Administrator will additionally furnish those notified a summary of the investigative findings and afford them an opportunity for a hearing regarding the debarment issue. Those notified must request a hearing on the debarment issue, if desired, by letter to the Administrator postmarked within 30 calendar days of the date of the letter from the Administrator. The letter requesting a hearing must set forth any findings which are in dispute and the reasons therefore, including any affirmative defenses to be raised. Proposed § 23.520(b)(1) also required the Administrator, upon receipt of a timely request for hearing, to refer the matter to the Chief ALJ by Order of Reference, to which would be attached a copy of the Administrator's investigative findings letter and the response thereto, for designation of an ALJ to conduct such hearings as may be necessary to determine the matters in dispute. Proposed § 23.520(b)(2) provided that hearings under § 23.520 would be conducted in accordance with 29 CFR part 6. If no timely request for

hearing was received, the Administrator's findings would become the final order of the Secretary. The Department did not receive any comments on this proposed provision. The final rule adopts the provision as proposed.

Section 23.530 Referral to Chief Administrative Law Judge; Amendment of Pleadings

The Department derived proposed § 23.530 from the DBA and SCA rules of practice for administrative proceedings in 29 CFR part 6. Proposed § 23.530(a) provided that upon receipt of a timely request for a hearing under § 23.510 (where the Administrator has determined that relevant facts are in dispute) or § 23.520 (debarment), the Administrator would refer the case to the Chief ALJ by Order of Reference, to which would be attached a copy of the investigative findings letter from the Administrator and the response thereto, for designation of an ALJ to conduct such hearings as may be necessary to decide the disputed matters. It further provided that a copy of the Order of Reference and attachments thereto would be served upon the respondent and the investigative findings letter and the response thereto would be given the effect of a complaint and answer, respectively, for purposes of the administrative proceeding.

Proposed § 23.530(b) stated that at any time prior to the closing of the hearing record, the complaint or answer may be amended with permission of the ALJ upon such terms as the ALJ shall approve, and that for proceedings initiated pursuant to § 23.510, such an amendment could include a statement that debarment action was warranted under § 23.520. It further provided that such amendments would be allowed when justice and the presentation of the merits are served thereby, provided there was no prejudice to the objecting party's presentation on the merits. It additionally stated that when issues not raised by the pleadings were reasonably within the scope of the original complaint and were tried by express or implied consent of the parties, they would be treated as if they had been raised in the pleadings, and such amendments could be made as necessary to make them conform to the evidence. Proposed § 23.530(b) further provided that the presiding ALJ could, upon reasonable notice and upon such terms as are just, permit supplemental pleadings setting forth transactions, occurrences, or events which had happened since the date of the pleadings and which are relevant to any of the issues involved. It also authorized the ALJ to grant a continuance in the hearing, or leave the record open, to enable the new allegations to be addressed. The Department received no comments related to proposed § 23.530 and the final rule adopts the provision as proposed.

Section 23.540 Consent Findings and Order

Proposed § 23.540, which the Department derived from 29 CFR 6.18 and 6.32, provided a process whereby parties may at any time prior to the ALJ's receipt of evidence or, at the ALJ's discretion, at any time prior to issuance of a decision, agree to dispose of the matter, or any part thereof, by entering into consent findings and an order. Proposed § 23.540(b) identified four requirements of any agreement containing consent findings and an order. Proposed § 23.540(c) provided that within 30 calendar days of receipt of any proposed consent findings and order, the ALJ would accept the agreement by issuing a decision based on the agreed findings and order, provided the ALJ is satisfied with the proposed agreement's form and substance. As the Department received no comments related to proposed § 23.540, the final rule adopts the provision as proposed.

Section 23.550 Proceedings of the Administrative Law Judge

Proposed § 23.550, which the Department primarily derived from 29 CFR 6.19 and 6.33, addressed the ALJ's proceedings and decision. Proposed § 23.550(a) provided that the Office of Administrative Law Judges has jurisdiction to hear and decide appeals concerning questions of law and fact from the Administrator's determinations issued under § 23.510 or § 23.520. It further provided that any party can, when requesting an appeal or during the pendency of a proceeding on appeal, timely move an ALJ to consolidate a proceeding initiated thereunder with a proceeding initiated under the DBA or SCA. The purpose of the proposed language was to allow the Office of Administrative Law Judges and interested parties to efficiently dispose of related proceedings arising out of the same contract with the Federal Government.

Proposed § 23.550(b) provided that each party may file with the ALJ proposed findings of fact, conclusions of law, and a proposed order, together with a brief, within 20 calendar days of filing of the transcript (or a longer period if the ALJ permits). It also provided that each party would serve such proposals and brief on all other parties.

Proposed § 23.550(c)(1) required an ALJ to issue a decision within a reasonable period of time after receipt of the proposed findings of fact, conclusions of law, and order, or within 30 calendar days after receipt of an agreement containing consent findings and an order disposing of the matter in whole. It further provided that the decision must contain appropriate findings, conclusions of law, and an order and be served upon all parties to the proceeding. Proposed § 23.550(c)(2) provided that if the Administrator requested debarment, and the ALJ concluded the contractor has violated the Executive order or part 23, the ALJ would issue an order regarding whether the contractor is subject to the ineligible list that would include any findings related to the contractor's disregard of its obligations to workers or subcontractors under the Executive order or part 23.

Proposed § 23.550(d) provided that the Equal Access to Justice Act (EAJA), as amended, 5 U.S.C. 504, does not apply to proceedings under part 23. In the NPRM, the Department explained that the proceedings proposed in subpart E were not required by an underlying statute to be determined on the record after an opportunity for an agency hearing. Therefore, an ALJ would have no authority to award attorney's fees and/or other litigation expenses pursuant to the provisions of the EAJA for any proceeding under part 23.

Proposed § 23.550(e) provided that if the ALJ concluded a violation occurred, the final order would require action to correct the violation, including, but not limited to, monetary relief for unpaid wages. It also required an ALJ to determine whether an order imposing debarment was appropriate, if the Administrator has sought debarment. Proposed § 23.550(f) provided that the ALJ's decision would become the final order of the Secretary, provided a party does not timely appeal the matter to the ARB.

The Department received no comments related to § 23.550. The final rule accordingly adopts the provision as proposed.

Section 23.560 Petition for Review

Proposed § 23.560, which the Department derived from 29 CFR 6.20 and 6.34, described the process to apply to petitions for review to the ARB from ALJ decisions. Proposed § 23.560(a) provided that within 30 calendar days after the date of the decision of the ALJ, or such additional time as the ARB granted, any party aggrieved thereby who desired review would need to file

a petition for review with supporting reasons in writing to the ARB with a copy thereof to the Chief ALJ. It further required that the petition refer to the specific findings of fact, conclusions of law, and order at issue and that a petition concerning a debarment decision state the disregard of obligations to workers and subcontractors, or lack thereof, as appropriate. It additionally required a party to serve the petition for review, and all briefs, on all parties and on the Chief ALJ. It also stated a party must timely serve copies of the petition and all briefs on the Administrator and the Associate Solicitor, Division of Fair Labor Standards, Office of the Solicitor, U.S. Department of Labor.

Proposed § 23.560(b) provided that if a party files a timely petition for review, the ALJ's decision would be inoperative unless and until the ARB issues an order affirming the letter or decision, or the letter or decision otherwise becomes a final order of the Secretary. It further provided that if a petition for review concerns only the imposition of debarment, the remainder of the decision would be effective immediately. Proposed § 23.560(b) additionally stated that judicial review would not be available unless a timely petition for review to the ARB was first filed. Failure of the aggrieved party to file a petition for review with the ARB within 30 calendar days of the ALJ decision would render the decision final, without further opportunity for appeal. As the Department received no comments related to proposed § 23.560, the final rule adopts the provision as proposed.

Section 23.570 Administrative Review Board Proceedings

Proposed § 23.570, which the Department derived primarily from 29 CFR 10.57, outlined the ARB proceedings under the Executive order. Proposed § 23.570(a)(1) stated the ARB has jurisdiction to hear and decide in its discretion appeals from the Administrator's investigative findings letters issued under § 23.510(c)(1) or (2), Administrator's rulings issued under § 23.580, and from ALJ decisions issued under § 23.550. Proposed § 23.570(a)(2) identified the limitations on the ARB's scope of review, including a restriction on passing on the validity of any provision of part 23, a general prohibition on receiving new evidence in the record (because the ARB is an appellate body and must decide cases before it based on substantial evidence in the existing record), and a bar on granting attorney's fees or other litigation expenses under the EAJA.

Proposed § 23.570(b) required the ARB to issue a final decision within a reasonable period of time following receipt of the petition for review and to serve the decision by mail on all parties at their last known address, and on the Chief ALJ, if the case involved an appeal from an ALJ's decision. Proposed § 23.570(c) required the ARB's order to mandate action to remedy the violation, including, but not limited to, providing monetary relief for unpaid wages, if the ARB concluded a violation occurred. If the Administrator had sought debarment, the ARB would determine whether a debarment remedy was appropriate. Proposed § 23.570(c) also provided that the ARB's order is subject to discretionary review by the Secretary as provided in Secretary's Order 01–2020 or any successor to that order. *See* Secretary of Labor's Order, 01–2020 (Feb. 21, 2020), 85 FR 13186 (Mar. 6, 2020).

Finally, proposed § 23.570(d) provided that the ARB's decision would become the Secretary's final order in the matter in accordance with Secretary's Order 01–2020 (or any successor to that order), which provides for discretionary review of such orders by the Secretary. *See id.*

The Department received no comments related to proposed § 23.570. The final rule adopts the provision as proposed.

Section 23.580 Administrator Ruling

Proposed § 23.580 set forth a procedure for addressing questions regarding the application and interpretation of the rules contained in part 23. Proposed § 23.580(a), which the Department derived primarily from 29 CFR 5.13, provided that such questions could be referred to the Administrator. It further provided that the Administrator would issue an appropriate ruling or interpretation related to the question. Requests for rulings under this section should be addressed to the Administrator, Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. Any interested party could, pursuant to § 23.580(b), appeal a final ruling of the Administrator issued pursuant to § 23.580(a) to the ARB.

Maximus commented that only a current or former employee, or their legally recognized representative, should be able to appeal a final ruling of the Administrator issued under § 23.580(a). After careful consideration, the Department declines to adopt this limitation. The provision, as proposed, is identical to the corresponding provision in the regulations implementing Executive Order 13658. Thus, the Department believes that this provision, as proposed, is consistent with the Executive order's instruction to incorporate to the extent practicable existing procedures and enforcement remedies under the regulations issued to implement Executive Order 13658. In addition, if Maximus' proposed limitation were adopted and only an employee or their legally recognized representative could seek ARB review of a final ruling of the Administrator, a contractor, for example, would not be permitted to file an appeal. The Department believes that appellate review should be more expansive, and that any interested party should be afforded the opportunity to appeal a final ruling letter of the Administrator to the ARB. Therefore, while the Department appreciates the commenter's recommendation, it declines to adopt Maximus' suggestion and adopts the provision as proposed.

Appendix A to Part 23 (Contract Clause)

Section 2 of Executive Order 14026 provides that executive departments and agencies, including independent establishments subject to the Federal Property and Administrative Services Act, must, to the extent permitted by law, ensure that new contracts, contract-like instruments, and solicitations include a clause, which the contractor and any covered subcontractors must incorporate into lower-tier subcontracts, specifying, as a condition of payment, the minimum wage to be paid to workers under the order. 86 FR 22835. Section 4 of the Executive order provides that the Secretary shall issue regulations by November 24, 2021, consistent with applicable law, to implement the requirements of the order. 86 FR 22836. Section 4 of the order also requires that, to the extent permitted by law, within 60 days of the Secretary issuing such regulations, the FARC shall amend regulations in the FAR to provide for inclusion of the contract clause in Federal procurement solicitations and contracts subject to the Executive order. *Id.* The order further specifies that any regulations issued pursuant to section 4 of the order should, to the extent practicable, incorporate existing definitions, principles, procedures, remedies, and enforcement processes under the FLSA, SCA, and DBA, Executive Order 13658, and regulations issued to implement Executive Order 13658. *Id.* Section 5 of the order grants authority to the Secretary to investigate potential violations of and obtain compliance with the order. *Id.* Because a contract clause is a requirement of the order, the Department set forth the text of a

proposed contract clause as Appendix A. As required by the order, the proposed contract clause specified the minimum wage to be paid to workers under the order. The Secretary possesses the authority to obtain compliance with the order, as well as the responsibility to issue regulations implementing the requirements of the order that incorporate, to the extent practicable, existing definitions, principles, procedures, remedies, and enforcement processes under the FLSA, SCA, DBA, Executive Order 13658, and the regulations issued to implement Executive Order 13658. Consistent with that authority and responsibility, the provisions of the proposed contract clause were based on the contract clause included in the Executive Order 13658 rulemaking, which was in turn based on the statutory text or implementing regulations of the DBA, FLSA, and SCA. *See* 79 FR 60685. For the reasons explained below, the Department is adopting the proposed contract clause with one modification in the final rule.

A few commenters, including AFL–CIO, SEIU, and the Teamsters, requested that the Department issue an All Agency Memorandum with an interim contract clause that instructs contracting agencies to immediately incorporate the Executive Order 14026 minimum wage into pending solicitations, awards, extensions, renewals, and options exercised before January 30, 2022. NELP similarly requested that the Department provide concrete guidance and instructions to agencies in order to ensure that existing contracts incorporate the Executive Order 14026 minimum wage. The Department appreciates commenters' recommendations for interim guidance encouraging agencies to take steps to incorporate the requirements of Executive Order 14026 into contract actions taken before January 30, 2022. As the Department has emphasized elsewhere in this rule, consistent with section 9(c) of Executive Order 14026, the Department strongly encourages agencies to bilaterally modify existing contracts, as appropriate, to include the minimum wage requirements of this rule even when such contracts are not otherwise considered to be a ''new contract'' under the terms of this rule. *See* 86 FR 22838. For example, pursuant to the order, contracting officers are encouraged to modify existing IDIQ contracts in accordance with FAR section 1.108(d)(3) to include the Executive Order 14026 minimum wage requirements. As noted earlier, when the FARC issued its interim rule amending the FAR to implement Executive Order 13658 in December 2014, the FARC expressly stated that ''In accordance with FAR 1.108(d)(3), contracting officers are strongly encouraged to include the clause in existing indefinite-delivery indefinite-quantity contracts, if the remaining ordering period extends at least six months and the amount of remaining work or number of orders expected is substantial.'' 79 FR 74545. The Department expects, and strongly encourages, the FARC to include this provision, or a substantially similar one, in its rule implementing Executive Order 14026. More generally, the Department encourages contracting agencies, to the extent permitted by law, to ensure that with respect to all existing contracts, solicitations issued between the date of Executive Order 14026 and the effective dates set forth in section 9 of the order, and contracts entered into between the date of Executive Order 14026 and the effective dates set forth in section 9 of the order, the hourly wages paid under such contracts are consistent with the minimum wages specified in sections 2 and 3 of the order. The Department will work with the FARC and contracting agencies to ensure compliance with and awareness of the provisions of Executive Order 14026 to the greatest extent possible.

The first sentence of proposed § 23.110 required that the contracting agency include the Executive order minimum wage contract clause set forth in Appendix A in all covered contracts and solicitations for such contracts, as described in § 23.30, except for procurement contracts subject to the FAR. It further stated that the required contract clause directs, as a condition of payment, that all workers performing on or in connection with covered contracts must be paid the applicable, currently effective minimum wage under Executive Order 14026 and § 23.50. It additionally provided that for procurement contracts subject to the FAR, contracting agencies shall use the clause set forth in the FAR developed to implement this rule and that such clause must both accomplish the same purposes as the clause set forth in Appendix A and be consistent with the requirements set forth in this rule.

Paragraph (a) of the proposed contract clause set forth in Appendix A provided that the contract in which the clause is included is subject to Executive Order 14026, the regulations issued by the Secretary of Labor at 29 CFR part 23 to implement the order's requirements, and all the provisions of the contract clause. The Department did not receive any comments on proposed paragraph (a) of the contract clause and thus implements the paragraph as proposed.

Paragraph (b) specified the contractor's minimum wage obligations to workers pursuant to the Executive order. Paragraph (b)(1) stipulated that each worker, as defined in 29 CFR 23.20, employed in the performance of the contract by the prime contractor or any subcontractor, regardless of any contractual relationship that may be alleged to exist between the contractor and the worker, shall be paid not less than the Executive order's applicable minimum wage. The term *worker* includes any person engaged in performing work on or in connection with a contract covered by the Executive order whose wages under such contract are governed by the FLSA, the SCA, or the DBA, regardless of the contractual relationship alleged to exist between the individual and the contractor.

Paragraph (b)(2) provided that the minimum wage required to be paid to each worker performing work on or in connection with the contract between January 30, 2022, and December 31, 2022, is $15.00 per hour. It specified that the applicable minimum wage required to be paid to each worker performing work on or in connection with the contract should thereafter be adjusted each time the Secretary's annual determination of the applicable minimum wage under section 2(a)(ii) of the Executive order results in a higher minimum wage. Section (b)(2) further provided that adjustments to the Executive order minimum wage will be effective January 1st of the following year, and will be published in the **Federal Register** no later than 90 days before such wage is to take effect. It also provided that the applicable minimum wage would be published on *https://alpha.sam.gov/content/wage-determinations* (or any successor website) and the applicable published minimum wage is incorporated by reference into the contract.

As explained in the NPRM, the effect of paragraphs (b)(1) and (2) will be to require the contractor to adjust the minimum wage of workers performing work on or in connection with a contract subject to the Executive order each time the Secretary's annual determination of the minimum wage results in a higher minimum wage than the previous year. For example, paragraph (b)(1) will require a contractor on a contract subject to the Executive order in 2022 (beginning on January 30, 2022) to pay covered workers at least $15.00 per hour for work performed on or in connection with the contract. If workers continue to perform work on or in connection with

the covered contract in 2023 and the Secretary determines the applicable minimum wage to be effective January 1, 2023, was $15.10 per hour for example, paragraphs (b)(1) and (2) will require the contractor to pay covered workers $15.10 for work performed on or in connection with the contract beginning January 1, 2023, thereby raising the wages of any workers paid $15.00 per hour prior to January 1, 2023.

ABC requested that the Department allow a ''multi-year grace period'' prior to implementation of this final rule, claiming that the rule will require considerable time for absorption and implementation by government contractors. However, the Executive order expressly requires that, as of January 30, 2022, workers performing on or in connection with covered contracts must be paid $15 per hour unless exempt. *See* 86 FR 22835–38. There is no indication in the Executive order that the Department has authority to modify the timing of the minimum wage requirement, much less to adopt a multiple year ''grace period'' before implementing this rule. Moreover, most contractors should already be familiar with Executive Order 13658 and its implementing regulations, *see* 29 CFR part 10, and thus will only need to familiarize themselves with the limited number of provisions in this final rule that differ from those under Executive Order 13658. For these reasons, the Department declines the request to allow a multi-year grace period before implementing this rule.

Section (b)(2) of the proposed contract clause also included a provision that would require contracting agencies to ensure that contractors are compensated for any increase in labor costs resulting from the annual inflation increases in the Executive Order 14026 minimum wage beginning on January 1, 2023. The Department noted, however, that such compensation is only warranted ''if appropriate.'' For example, if the contracting agency and contractor have already anticipated an increase in labor costs in pricing the applicable contract, it would not be appropriate for a contractor to receive compensation in addition to whatever consideration it has already received for any increase in labor costs in the applicable contract. The Department further noted that contractors shall be compensated ''only for'' increases in labor costs resulting from operation of the annual inflation increases. Thus, contractors are entitled to be compensated under the provision only for any increases in labor costs directly resulting from the annual inflation increase. For example, contractors are not entitled to be compensated for labor costs they allege they incurred related to raising wages for non-covered workers due to operation of the annual inflation increase for covered workers. Compensation adjustments would necessarily be made on a contract-by-contract basis, and where any annual inflation increase does not increase labor costs because, for example, of the efficiency and other benefits resulting from the increase, the contractor will not ultimately receive additional compensation as a result of the annual inflation increase.

The Department recognized in the NPRM that the mechanics of providing an adjustment to the economic terms of a covered contract likely differ between covered procurement and non-procurement contracts. With respect to covered non-procurement contracts subject to the Department's proposed contract clause, the Department stated its belief that the authority conferred on agencies that enter into such contracts under section 4(b) of the Executive order includes the authority to provide the type of adjustment contained in the Department's contract clause.

As noted in the discussion of § 23.110, AGC requested that the Department delete or clarify the phrase ''if appropriate'' in the sentence of section b(2) of the proposed contract clause providing that ''[i]f appropriate, the contracting [agency] shall ensure the contractor is compensated only for the increase in labor costs resulting from the annual inflation increases in the Executive Order 14026 minimum wage beginning on January 1, 2023.'' The Department declines to adopt the requested change, which would operate to entitle contractors to mandatory price adjustments for the increase in labor costs resulting from the annual inflation increases in the Executive Order 14026 minimum wage. The rules govering price adjustments for procurement contracts are governed by the FAR and are thus outside the scope of this rulemaking. If necessary, the FARC can address price adjustments in their rulemaking to implement Executive Order 14026, which will follow this rule. *See* 86 FR 22836. With respect to nonprocurement contracts, and as explained in more detail in the discussion of § 23.110, the Department believes that price adjustments are a discretionary tool that contracting agencies may provide to contractors if appropriate, based on the specific nature of the contract. As a result, the Department has retained the phrase ''if appropriate'' in paragraph (b)(2) of the required contract clause.

The Department intended paragraph (b)(3), which it derived from the contract clauses applicable to contracts subject to the SCA and the DBA, *see* 29 CFR 4.6(h) (SCA), 29 CFR 5.5(a)(1) (DBA), to ensure full payment of the applicable Executive order minimum wage to covered workers. Specifically, proposed paragraph (b)(3) required the contractor to pay unconditionally to each covered worker all wages due free and clear and without deduction (except as otherwise provided by § 23.230), rebate or kickback on any account. Paragraph (b)(3) further required that wages shall be paid no later than one pay period following the end of the regular pay period in which such wages were earned or accrued. Paragraph (b)(3) also required that a pay period under the Executive order may not be of any duration longer than semi-monthly (a duration permitted under the SCA, *see* 29 CFR 4.165(b)). The Department did not receive any comments seeking to alter the language of proposed paragraph (b)(3) of the proposed contract clause, and therefore adopts the language as proposed.

Paragraph (b)(4) of the proposed contract clause provided that the prime contractor and any upper-tier subcontractor(s) will be responsible for the compliance by any subcontractor or lower-tier covered subcontractor with the Executive order minimum wage requirements. Proposed paragraph (b)(4) also stated that the contractor and any subcontractor(s) responsible therefore will be liable for unpaid wages in the event of any violation of the minimum wage obligation of these clauses. As discussed earlier, the Department has found this flow-down model of responsibility to be an effective method to obtain compliance with the DBA, SCA, and Executive Order 13658, and to ensure that covered workers receive the wages to which they are statutorily entitled even if, for example, the subcontractor that employed them is insolvent. The Department opined that the flow-down model of responsibility will likewise prove an effective model to enforce the Executive order's obligations and ensure payment of wages to covered workers. The Department did not receive any comments seeking to alter the language of paragraph (b)(4) of the proposed contract clause, and therefore adopts the language as proposed.

Proposed paragraph (b)(5) of the contract clause in Appendix A stated that workers with disabilities whose wages are calculated pursuant to special certificates issued under section 14(c) of the FLSA must be paid at least the Executive order minimum wage (or the

applicable commensurate wage rate under the certificate, if such rate is higher than the Executive order minimum wage) for time spent performing work on or in connection with covered contracts. The Department did not receive comments specifically addressing paragraph (b)(5) of the proposed contract clause and therefore adopts the paragraph as proposed.

The Department derived proposed paragraphs (c) and (d) of the contract clause, which specified remedies in the event of a determination of a violation of Executive Order 14026 or part 23, primarily from the contract clauses applicable to contracts subject to the SCA and the DBA, *see* 29 CFR 4.6(i) (SCA); 29 CFR 5.5(a)(2), (7) (DBA). Paragraph (c) provided that the agency head shall, upon its own action or upon written request of an authorized representative of the Department, withhold or cause to be withheld from the prime contractor under the contract or any other Federal contract with the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay workers the full amount of wages required by the Executive order. Consistent with withholding procedures under the SCA and the DBA, paragraph (c) would allow the contracting agency and the Department to effect withholding of funds from the prime contractor on not only the contract covered by the Executive order but also on any other contract that the prime contractor has entered into with the Federal Government.

Proposed paragraph (d) stated the circumstances under which the contracting agency and/or the Department could suspend, terminate, or debar a contractor for violations of the Executive order. It provided that in the event of a failure to comply with any term or condition of the Executive order or 29 CFR part 23, including failure to pay any worker all or part of the wages due under the Executive order, the contracting agency could on its own action, or after authorization or by direction of the Department and written notification to the contractor, take action to cause suspension of any further payment, advance, or guarantee of funds until such violations have ceased. Paragraph (d) additionally provided that any failure to comply with the contract clause may constitute grounds for termination of the right to proceed with the contract work and, in such event, for the Federal Government to enter into other contracts or arrangements for completion of the work, charging the contractor in default with any additional cost. Paragraph (d) also provided that a breach of the contract clause may be grounds to debar the contractor as provided in 29 CFR part 23.

Several commenters, including AFL–CIO, NELA, SEIU, Strategic Organizing Center, and the Teamsters, requested that the Department amend the contract clause to include language expressly stating that compliance with the minimum wage requirements of Executive Order 14026 and 29 CFR part 23 is a material condition of payment under the contract. These commenters suggested that such a statement could aid in False Claims Act (FCA) litigation based on violations of Executive Order 14026 and 29 CFR part 23 because ''materiality'' is an essential element of FCA claims. While the Department appreciates the commenters' suggestion, the Department believes that the contract clause as proposed is sufficient to put a contractor on notice that a violation of the minimum wage requirements of Executive Order 14026 is material within the meaning of the FCA. For this reason, and because the relevant language of the contract clause as proposed is identical to the contract clause issued by the Department to implement Executive Order 13658, the Department declines to adopt the commenters' suggestion.

Executive Order 14026, the implementing regulations, and the proposed contract clause itself all make clear that compliance with the applicable minimum wage requirements is a condition of payment. Section 2 of the Executive Order expressly states that its requirements are a condition of payment, 86 FR 22835, and § 23.210(a) of this final rule similarly states that the contractor must abide by the contract clause ''as a condition of payment.'' In addition, the contract clause's withholding provision makes compliance with the Executive order minimum wage a condition of payment. *See United States ex rel. Int'l Bhd. of Elec. Workers Loc. Union No. 98* v. *Farfield Co.,* 5 F.4th 315, 344–45 (3d Cir. 2021) (explaining that the government's right under the DBA to unilaterally withhold payment from a contractor supported the conclusion that compliance with the DBA was a *material* condition of payment under the contract).

As the withholding provision of the contract clause already makes clear, *see* paragraph (c), to ensure the availability of funds for the payment of back wages to workers when a contractor has failed to pay the full amount of wages required by Executive Order 14026, the contracting agency shall withhold from the contractor the funds necessary to pay workers the full amount of required wages. In other words, if the condition of payment is not satisfied, the contractor will not be paid in full unless and until the violation is remedied. Thus, the contract clause, as proposed, provides the contractor with notice that compliance with the minimum wage requirements of Executive Order 14026 is a condition of payment under the contract.

The Department believes that the these provisions suffice to place a contractor on notice that a violation of the minimum wage requirements of Executive Order 14026 is material to the government's decision to pay in full under the contract. As noted, this conclusion is consistent with the contract clause issued by the Department to implement Executive Order 13658, which does not contain ''condition of payment'' language or expressly refer to materiality, as well as with the Supreme Court's most recent FCA decision, in which the Court stated that ''[w]hat matters is not the label the Government attaches to a requirement, but whether the defendant knowingly violated a requirement that the defendant knows is material to the Government's payment decision.'' *Universal Health Servs., Inc.* v. *United States ex rel. Escobar,* 136 S. Ct. 1989, 1995 (2016). For these reasons, the Department declines the commenters' suggestion and adopts paragraph (d) of the contract clause as proposed.

Proposed paragraph (e) provided that contractors may not discharge any portion of their minimum wage obligation under the Executive order by furnishing fringe benefits, or with respect to workers whose wages are governed by the SCA, the cash equivalent thereof. As noted earlier, Executive Order 14026 increases ''the hourly minimum wage'' paid by contractors with the Federal Government. 86 FR 22835. By repeatedly stating that it is increasing the hourly minimum wage, without any reference to fringe benefits, the text of the Executive order makes clear that a contractor cannot discharge its minimum wage obligation by furnishing fringe benefits. This is consistent with the Department's interpretation in the regulations issued to implement Executive Order 13658, *see* 79 FR 60688, and the SCA, which does not permit a contractor to meet its minimum wage obligation through the furnishing of fringe benefits, but rather imposes distinct ''minimum wage'' and ''fringe benefit'' obligations on contractors. 41 U.S.C. 6703(1)–(2). Similarly, the FLSA does not allow a contractor to meet its minimum wage obligation through the

furnishing of fringe benefits. Although the DBA specifically includes fringe benefits within its definition of minimum wage, thereby allowing a contractor to meet its minimum wage obligation, in part, through the furnishing of fringe benefits, 40 U.S.C. 3141(2), Executive Order 14026 contains no similar provision expressly authorizing a contractor to discharge its Executive order minimum wage obligation through the furnishing of fringe benefits. Consistent with the Executive order, paragraph (e) would accordingly preclude a contractor from discharging its minimum wage obligation by furnishing fringe benefits.

Paragraph (e), as proposed, also prohibited a contractor from discharging its minimum wage obligation to workers whose wages are governed by the SCA by providing the cash equivalent of fringe benefits, including vacation and holidays. As discussed above, the SCA imposes distinct ''minimum wage'' and ''fringe benefit'' obligations on contractors. 41 U.S.C. 6703(1)–(2). A contractor cannot satisfy any portion of its SCA minimum wage obligation through the provision of fringe benefit payments or cash equivalents furnished or paid pursuant to 41 U.S.C. 6703(2). 29 CFR 4.177(a). Consistent with the treatment of fringe benefit payments or their cash equivalents under the SCA, proposed paragraph (e) would not allow contractors to discharge any portion of their minimum wage obligation under the Executive order to workers whose wages are governed by the SCA through the provision of either fringe benefits or their cash equivalent. The Department did not receive any comments specifically concerning paragraph (e) and the Department thus adopts the paragraph as proposed.

Proposed paragraph (f) provided that nothing in the contract clause would relieve the contractor from compliance with a higher wage obligation to workers under any other Federal, State, or local law, or under contract, nor shall a lower prevailing wage under any such Federal, State, or local law, or under contract, entitle a contractor to pay less than the Executive order minimum wage. This provision would implement section 2(c) of the Executive order, which provides that nothing in the order excuses noncompliance with any applicable Federal or state prevailing wage law, or any applicable law or municipal ordinance establishing a minimum wage higher than the minimum wage established under the order. 86 FR 22836. For example, if a municipal law required a contractor to pay a worker $15.75 per hour on January 30, 2022, a contractor could not rely on the $15.00 Executive order minimum wage to pay the worker less than $15.75 per hour. The Department did not receive any comments specifically addressing paragraph (f) and thus adopts the paragraph as proposed.

Proposed paragraph (g) set forth recordkeeping and related obligations that were consistent with the Secretary's authority under section 5 of the order to obtain compliance with the order, and that the Department viewed as essential to determining whether the contractor has paid the Executive order minimum wage to covered workers. The obligations in proposed paragraph (g) were identical to the obligations that the Department derived in the Executive Order 13658 rulemaking. *See* 79 FR 60689. The Department originally derived these obligations from the DBA, FLSA, and SCA. Proposed paragraph (g)(1) listed specific payroll records obligations of contractors performing work subject to the Executive order, providing in particular that such contractors shall make and maintain for three years, work records containing the following information for each covered worker: Name, address, and social security number; the worker's occupation(s) or classification(s); the rate or rates paid to the worker; the number of daily and weekly hours worked by each worker; any deductions made; and total wages paid. The records required to be kept by contractors pursuant to proposed paragraph (g)(1) are coextensive with recordkeeping requirements that already exist under, and are consistent across, the FLSA, DBA, and SCA; as a result, compliance by a covered contractor with the proposed payroll records obligations would not impose any obligations to which the contractor is not already subject under the FLSA, DBA, and SCA.

Proposed paragraph (g)(1) further provided that the contractor performing work subject to the Executive order shall make such records available for inspection and transcription by authorized representatives of the WHD.

Proposed paragraph (g)(2) required the contractor to make available a copy of the contract for inspection or transcription by authorized representatives of the WHD. Proposed paragraph (g)(3) provided that failure to make and maintain, or to make available to the WHD for transcription and inspection, the records identified in paragraph (g)(1) would be a violation of the regulations implementing Executive Order 14026 and the contract. Paragraph (g)(3) additionally provided that in the case of a failure to produce such records, the contracting officer, upon direction of the Department, or under their own action, would take action to cause suspension of any further payment or advance of funds until such violations have ceased. Proposed paragraph (g)(4) required the contractor to permit authorized representatives of the WHD to conduct the investigation, including interviewing workers at the worksite during normal working hours. Proposed paragraph (g)(5) provided that nothing in the contract clause would limit or otherwise modify a contractor's recordkeeping obligations, if any, under the FLSA, DBA, and SCA, and their implementing regulations, respectively. Thus, for example, a contractor subject to both Executive Order 14026 and the DBA with respect to a particular project would be required to comply with all recordkeeping requirements under the DBA and its implementing regulations. The Department received no comments on paragraph (g) and adopts the paragraph as proposed.

Proposed paragraph (h) required the contractor to both insert the contract clause in all its covered subcontracts and to require its subcontractors to include the clause in any lower-tiered subcontracts. Paragraph (h) further made the prime contractor and any upper-tier contractor responsible for the compliance by any subcontractor or lower tier subcontractor with the contract clause.

As explained in the discussion of coverage of subcontracts in Subpart A of this part, the Department received several comments expressing confusion regarding the coverage of subcontracts, particularly with respect to vendor and supplier agreements. As discussed above, the Department has therefore decided to amend paragraph (h) of the contract clause to explicitly add the following sentence: ''Executive Order 14026 does not apply to subcontracts for the manufacturing or furnishing of materials, supplies, articles, or equipment, and this clause is not required to be inserted in such subcontracts.'' The Department believes that this clarification will help minimize any confusion regarding subcontract coverage. Except for this modification, the Department adopts paragraph (h) of the contract clause as proposed.

Proposed paragraph (i), which the Department derived from the SCA contract clause, 29 CFR 4.6(n), set forth the certifications of eligibility the contractor makes by entering into the contract. Paragraph (i)(1) stipulated that by entering into the contract, the contractor and its officials will be certifying that neither the contractor, the certifying officials, nor any person or firm with an interest in the contractor's

firm is a person or firm ineligible to be awarded Federal contracts pursuant to section 5 of the SCA, section 3(a) of the DBA, or 29 CFR 5.12(a)(1). Paragraph (i)(2) constituted a certification that no part of the contract will be subcontracted to any person or firm ineligible to receive Federal contracts. Paragraph (i)(3) contained an acknowledgement by the contractor that the penalty for making false statements is prescribed in the U.S. Criminal Code at 18 U.S.C. 1001. The Department received no comments related to paragraph (i) and adopts the provision's language as proposed.

The Department based proposed paragraph (j) on section 3 of the Executive order. It addressed the employer's ability to use a partial wage credit based on tips received by a tipped employee (tip credit) to satisfy the wage payment obligation under the Executive order. The provision set the requirements an employer must meet in order to claim a tip credit. The Department received no comments on paragraph (j) of the contract clause and adopts it as proposed.

Proposed paragraph (k) established a prohibition on retaliation that the Department derived from the FLSA's antiretaliation provision that is consistent with the Secretary's authority under section 5 of the order to obtain compliance with the order. It prohibited any person from discharging or discriminating against a worker because such worker has filed any complaint or instituted or caused to be instituted any proceeding under or related to Executive Order 14026 or part 23, or has testified or is about to testify in any such proceeding. The Department proposed to interpret the prohibition on retaliation in paragraph (k) in accordance with its interpretation of the analogous FLSA provision. The Department received no comments on paragraph (k) and adopts the paragraph as proposed.

Proposed paragraph (l) is based on section 5(b) of the Executive order. It accordingly provided that disputes related to the application of the Executive order to the contract will not be subject to the contract's general disputes clause. Instead, such disputes will be resolved in accordance with the dispute resolution process set forth in 29 CFR part 23. Paragraph (l) also provided that disputes within the meaning of the clause includes disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the workers or their representatives.

Several commenters, including AFL–CIO, Center for American Progress, NELA, SEIU, and the Teamsters requested that the Department add language to the contract clause stating that workers covered by Executive Order 14026 are intended third party beneficiaries of the contract's minimum wage provisions required by Executive Order 14026. Commenters explained that this would allow workers to enforce the Executive order's minimum wage requirements through private litigation. After careful consideration, the Department declines to add such language to the contract clause. Section 10(c) of the Executive order states that the order ''is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.'' 86 FR 22838. Given this language, the Department does not have the discretion to create or authorize a private right of action under Executive Order 14026 and thus declines to amend the contract clause to expressly designate workers as third party beneficiaries of the contract's minimum wage requirements. The Department notes, however, that whether or not a worker could make a third party beneficiary claim under relevant state law would be determined by such state law. As explained earlier, neither the Executive order nor this part are intended to modify any existing private rights of action that workers may possess under other applicable laws. The Department did not receive additional comments related to paragraph (l) of the contract clause and thus adopts the paragraph as proposed.

Proposed paragraph (m) related to the contractor's responsibility in providing notice to workers of the applicable Executive order minimum wage. The methods of notice contained in proposed paragraph (m) reflected those contained in proposed § 23.290. A full discussion of the methods of notice contained in proposed paragraph (m), including the Department's responses to comments submitted in relation to § 23.290, can accordingly be found in the preamble describing the operation of § 23.290. For the reasons discussed in the preamble to § 23.290, the Department adopts paragraph (m) of the contract clause as proposed.

III. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* and its attendant regulations, 5 CFR part 1320, requires that the Department consider the impact of paperwork and other information collection burdens imposed on the public. Under the PRA, an agency may not collect or sponsor an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number. *See* 5 CFR 1320.8(b)(3)(vi). The OMB has assigned control number 1235–0018 to the general recordkeeping provisions of various labor standards that the WHD administers and enforces and control number 1235–0021 to the information collection which gathers information from complainants alleging violations of such labor standards. In accordance with the PRA, the Department solicited public comments on the proposed changes to those information collections in the NPRM, as discussed below. *See* 86 FR 38816 (July 22, 2021). The Department also submitted a contemporaneous request for OMB review of the proposed revisions to the information collections in accordance with 44 U.S.C. 3507(d). On September 2, 2021, the OMB issued a notice that continued the previous approval of the information collections under the existing terms of clearance and ask the Department to resubmit the requests upon promulgation of the final rule and after consideration of the public comments received.

Circumstances Necessitating Collection

Executive Order 14026 establishes a higher minimum wage requirement for certain Federal contracts beginning January 30, 2022 than would otherwise be required by Executive Order 13658. *See* 86 FR 22835. Specifically, Executive Order 14026 establishes an initial minimum wage requirement of $15.00 per hour and an initial minimum cash wage for tipped employees of $10.50 per hour, both of which will be higher than the corresponding rates that will be in effect on January 30, 2022 under Executive Order 13658. *See* 86 FR 22835–36. Like Executive Order 13658, Executive Order 14026 requires the Department to update the order's minimum wage requirement each subsequent year to account for inflation. *Id.* However, Executive Order 14026 gradually phases out a contractor's ability to pay a subminimum cash wage for tipped employees under Executive Order 14026, raising the minimum cash wage for tipped employees to 85 percent of the order's applicable minimum wage on January 1, 2023, and to 100 percent of the order's applicable minimum wage on January 1, 2024. *See* 86 FR 22836.

Finally, effective January 30, 2022, section 6 of Executive Order 14026 revokes Executive Order 13838. *See* 86 FR 22836. Executive Order 13838 presently exempts contracts in connection with seasonal recreational

services or seasonal recreational equipment rental offered for public use on Federal lands from the minimum wage requirements established under Executive Order 13658. Consequently, as of January 30, 2022, these contracts will no longer be exempt from the minimum wage requirement of Executive Order 13658 and/or will become subject to Executive Order 14026, to the extent that they qualify as ''new contracts.''

This final rule, which implements Executive Order 14026, contains several provisions that could be considered to entail collections of information: (1) The requirement in § 23.210 for a contractor and its subcontractors to include the Executive Order 14026 minimum wage contract clause in any covered subcontract; (2) recordkeeping requirements for covered contractors described in § 23.260(a); (3) the complaint process described in § 23.410; and (4) the administrative proceedings described in subpart E.

Subpart C states compliance requirements for contractors covered by Executive Order 14026. As discussed above, § 23.210 states that the contractor and any subcontractor, as a condition of payment, must abide by the Executive order minimum wage contract clause and must include in any covered lower-tier subcontracts the minimum wage contract clause. This final rule at § 23.260 describes recordkeeping requirements for contractors subject to Executive Order 14026. Finally, § 23.290 includes a notice requirement, requiring contractors to notify all workers performing work on or in connection with a covered contract of the applicable minimum wage rate under Executive Order 14026.

The disclosure of information originally supplied by the Federal Government for the purpose of disclosure is not included within the definition of a collection of information subject to the PRA. *See* 5 CFR 1320.3(c)(2). The Department has thus determined that §§ 23.210 and 23.290 do not include an information collection subject to the PRA. The Department also notes that the recordkeeping requirements in § 23.260 are requirements that contractors must already comply with under the FLSA, SCA, DBA, and/or Executive Order 13658 under an OMB-approved collection of information (OMB control number 1235–0018). The Department believes that the final rule does not impose any additional notice or recordkeeping requirements on contractors for PRA purposes. Therefore, the burden for complying with the recordkeeping requirements in this final rule is subsumed under the current approval.

WHD obtains PRA clearance under control number 1235–0021 for an information collection covering complaints alleging violations of various labor standards that the agency administers and enforces. An ICR has been submitted to revise the approval to incorporate the regulatory citations in this final rule applicable to complaints and adjust burden estimates to reflect any increase in the number of complaints filed against contractors who fail to comply with Executive Order 14026's higher minimum wage requirement. Note that the Department has increased the estimate slightly from the proposed rule due to a slight increase in the number of affected workers shown in the regulatory impact analysis. Subpart E establishes administrative proceedings to resolve investigation findings. Particularly with respect to hearings, the rule imposes information collection requirements. The Department notes that information exchanged between the target of a civil or an administrative action and the agency in order to resolve the action would be exempt from PRA requirements. *See* 44 U.S.C. 3518(c)(1)(B); 5 CFR 1320.4(a)(2). This exemption applies throughout the civil or administrative action (such as an investigation and any related administrative hearings). Therefore, the Department has determined the administrative requirements contained in subpart E of this final rule are exempt from needing OMB approval under the PRA.

Information and technology: There is no particular order or form of records prescribed by the regulations. A contractor may meet the requirements of this final rule using paper or electronic means. WHD, in order to reduce burden caused by the filing of complaints that are not actionable by the agency, uses a complaint filing process in which complainants discuss their concerns with WHD professional staff. This process allows agency staff to refer complainants raising concerns that are not actionable under wage and hour laws and regulations to an agency that may be able to offer assistance.

Public comments: The Department sought comments on its analysis that the proposed rule created a slight increase in paperwork burden associated with ICR 1235–0021 but did not create a paperwork burden on the regulated community of the information collection provisions contained in ICR 1235–0018. The Department received a few comments expressing concern about additional recordkeeping requirements under the proposed rule. For example, the Chamber argued that there will be a ''tremendous administrative burden'' resulting from this rule because contractors will need to segregate time that workers spend performing on or in connection with covered contracts from hours worked on other non-covered matters. The AOA similarly expressed that, even if it were ''practically feasible'' for a contractor to engage in such segregation, the recordkeeping would be ''cost-prohibitive,'' especially for ''small businesses that may be more likely to have employees splitting time between federal and non-federal work.''

As explained in the preamble discussion above regarding worker coverage and recordkeeping requirements, for those contractors currently subject to Executive Order 13658, Executive Order 14026 imposes no new recordkeeping requirements beyond what the contractor is already required to comply with under Executive Order 13658, including with respect to the identification of workers performing ''in connection with'' covered contracts and the segregation of hours worked on covered and non-covered contracts. For contractors not currently subject to Executive Order 13658, Executive Order 14026 imposes minimal burden because its recordkeeping requirements mirror those that already exist under the DBA, FLSA, and SCA. For example, with respect to the comments noted above expressing concern about administrative burdens resulting from the segregation of time spent performing under federal contracts and time spent performing on non-covered matters, the Department notes that tracking the rate of pay for a worker is not a new information collection requirement. A worker's rate of pay is already a required record under the DBA, FLSA, SCA, and Executive Order 13658. Moreover, in the Department's experience, employers already routinely track different rates of pay for different workers and for different job classifications or projects. The Department thus did not propose any additional recordkeeping requirements beyond what is already approved by OMB under this information collection.

An agency may not conduct an information collection unless it has a currently valid OMB approval, and the Department submitted the identified information collection contained in the proposed rule to OMB for review in accordance with the PRA under Control numbers 1235–0021 and 1235–0018. *See* 44 U.S.C. 3507(d); 5 CFR 1320.11. The Department has resubmitted the revised information collections to OMB

for approval, and the Department intends to publish a notice announcing OMB's decision regarding this information collection request. A copy of the information collection request can be obtained by contacting the Wage and Hour Division as shown in the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

Total burden for the recordkeeping and complaint process information collections, including the burdens that will be unaffected by this final rule and any changes are summarized as follows:

Type of review: Revisions to currently approved information collections.

Agency: Wage and Hour Division, Department of Labor.

Title: Employment Information Form.

OMB Control Number: 1235–0021.

Affected public: Private sector, businesses or other for-profits and Individuals or Households.

Estimated number of respondents: 38,244 (169 from this rulemaking).

Estimated number of responses: 38,244 (169 from this rulemaking).

Frequency of response: On occasion.

Estimated annual burden hours: 12,748 (56 burden hours due to this final rule).

Estimated annual burden costs: $0 ($0 from this rulemaking).

Title: Records to be kept by Employers.

OMB Control Number: 1235–0018.

Affected public: Private sector, businesses or other for-profits and Individuals or Households.

Estimated number of respondents: 5,621,961 (0 from this rulemaking).

Estimated number of responses: 47,118,160 (0 from this rulemaking).

Frequency of response: Various.

Estimated annual burden hours: 3,626,426 (0 from this rulemaking).

Estimated annual burden costs: $0 from this rulemaking.

IV. Executive Order 12866, Regulatory Planning and Review; and Executive Order 13563, Improved Regulation and Regulatory Review

Under Executive Order 12866, OMB's Office of Information and Regulatory Affairs (OIRA) determines whether a regulatory action is significant and, therefore, subject to the requirements of the Executive order and OMB review.[27] Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as a regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities (also referred to as economically significant); (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive order. OIRA has determined that this final rule is economically significant under section 3(f) of Executive Order 12866.

Executive Order 13563 directs agencies to, among other things, propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; that it is tailored to impose the least burden on society, consistent with obtaining the regulatory objectives; and that, in choosing among alternative regulatory approaches, the agency has selected those approaches that maximize net benefits. Executive Order 13563 recognizes that some costs and benefits are difficult to quantify and provides that, when appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts. The analysis below outlines the impacts that the Department anticipates may result from this final rule and was prepared pursuant to the above-mentioned Executive orders.

The Department received a number of comments on the NPRM's regulatory analysis. Other substantive comments are addressed thoughout this analysis in the specific section relevant to the comment.

A. Introduction

1. Background

This final rulemaking implements Executive Order 14026, ''Increasing the Minimum Wage for Federal Contractors.'' This Executive order seeks to promote ''economy and efficiency'' in Federal procurement by increasing the hourly minimum wage paid by the parties that contract with the Federal Government to $15.00 for those workers working on or in connection with a covered Federal contract beginning January 30, 2022. For covered tipped workers, the minimum required cash wage will be $10.50 per hour beginning January 30, 2022, gradually rising to the full Executive Order 14026 minimum wage on January 1, 2024. The Executive order states that raising the minimum wage enhances worker productivity and generates higher-quality work by boosting workers' health, morale, and effort; reducing absenteeism and turnover; and lowering supervisory and training costs. Executive Order 14026 supersedes Executive Order 13658, which established a lower minimum wage for contractors, to the extent that the orders are inconsistent. Finally, effective January 30, 2022, Executive Order 14026 will revoke Executive Order 13838, which presently exempts contracts entered into with the Federal Government in connection with seasonal recreational services or seasonal recreational equipment rental for the general public on Federal lands from coverage of Executive Order 13658.

2. Summary of Affected Employees, Costs, Transfers, and Benefits

The Department estimated the number of employees who would, as a result of the Executive order and this final rule, see an increase in their hourly wage, *i.e.,* ''affected employees.'' The Department estimates there will be 327,300 affected employees in the first year of implementation (Table 1).[28] During the first 10 years the rule is in effect, average annualized direct employer costs are estimated to be $2.4 million assuming a 7 percent real discount rate (hereafter, unless otherwise specified, average annualized values will be presented using a 7 percent real discount rate). This estimated annualized cost includes $1.9 million for regulatory familiarization and $538,500 for implementation costs. Other potential costs are discussed qualitatively.

The direct transfer payments associated with this rule are transfers of income from employers to employees in the form of higher wage rates.[29] Estimated average annualized transfer payments are $1.7 billion per year over 10 years. This transfer estimate may be an underestimate because it does not capture workers already earning above $15.00 that may have their wages increased as well (*i.e.,* spillover costs). Additionally, employers with Federal contracts may increase wages for their workers who are not working on the contract. Transfer payment estimates are somewhat larger here than in the NPRM due to the inclusion of overtime pay.

The Department expects that increasing the minimum wage of

[27] *See* 58 FR 51735, 51741 (Oct. 4, 1993).

[28] The estimate of affected employees represents the number of full-year employees working exclusively on covered contracts.

[29] These transfers may ultimately be passed on to the Federal Government and other entities, as discussed in section IV.C.2.c.ii.

Federal contract workers will generate several important benefits. However, due to data limitations, these benefits are not monetized. As noted in the Executive order, this rule will ''promote economy and efficiency.'' Specifically, this final rule discusses benefits from improved government services, increased morale and productivity, reduced turnover, reduced absenteeism, and reduced poverty and income inequality for Federal contract workers.

Executive Order 14026 directs the Department to issue regulations to implement the order and also grants the Department exclusive enforcement authority over the order; the Department's regulations will therefore govern covered contracts. Because Executive Order 14026 also directs the FARC to amend the FAR to provide for inclusion of an implementing contract clause in covered procurement contracts and other agencies to take necessary steps to implement the order, the Department acknowledges that some impacts could be attributed to future rulemaking or other action by other agencies, such as the FARC. However, because such subsequent steps are dependent on the Department's rule and the Department's regulations will govern enforcement of this Executive order, the Department believes it is appropriate to attribute (on a shared basis, for effects associated with procurement contracts) the impacts discussed in this analysis to this final rule.

TABLE 1—SUMMARY OF AFFECTED EMPLOYEES, REGULATORY COSTS, AND TRANSFERS

	Year 1	Future Years		Average annualized value	
		Year 2	Year 10	3% Real rate	7% Real rate
Affected employees (1,000s)	327.3	329.3	345.6	.....	.....
Direct employer costs (million)	$17.1	$0	$0	$2.0	$2.4
Regulatory familiarization	$13.4	$0	$0	$1.6	$1.9
Implementation	$3.8	$0	$0	$0.4	$0.5
Transfers (millions)	$1,711	$1,721	$1,806	$1,755	$1,752

B. Number of Affected Firms and Employees

1. Overview and Data

This section explains the Department's methodology to estimate the number of affected firms and employees. The Department estimates there are 507,200 potentially affected firms. The Department estimates that of the 1.8 million potentially affected workers, 327,300 will be affected and see an increase in wages. No substantive comments were received countering the estimated number of covered firms and employees. Some commenters asserted that transfer payments would apply to a broader population, such as workers earning above $15 per hour or workers employed by a covered contractor who do not perform work on or in connection with covered contracts. These comments are addressed in section IV.B.3. Therefore, this methodology is the same as the NPRM. The Economic Policy Institute (EPI) submitted a comment citing their research which found similar results (1.9 million contract workers in 2022 and 390,000 affected workers). The Department appreciates such information and notes that EPI's findings are consistent with the Department's analysis and conclusions.

The number of firms is estimated primarily from the General Services Administration's (GSA) System for Award Management (SAM). This is supplemented with a variety of other data sources. There are no government data on the number of employees working on Federal contracts; therefore, to estimate the number of Federal contract employees, the Department employed the approach used in two previous Executive order rulemakings, the 2016 rule implementing Executive Order 13706, ''Establishing Paid Sick Leave for Federal Contractors,'' which was an updated version of the methodology used in the 2014 rulemaking implementing Executive Order 13658.[30] This approach uses data from *USASpending.gov,* a database of Government contracts from the Federal Procurement Data System–Next Generation (FPDS–NG).

Although more recent data is available, the Department generally used data from 2019 to avoid any shifts in the data associated with the COVID–19 pandemic in 2020. Any long-run impacts of COVID–19 are speculative because this is an unprecedented situation, so using data from 2019 is the best approximation the Department has for future impacts. The pandemic could cause structural changes to the economy, resulting in shifts in industry employment and wages. The transfers to employees associated with this rule could be an underestimate or an overestimate, depending on how employment and wages change in the industries affected by this rule.

After approximating the total number of Federal contract employees, the Department estimated the share who would receive an increase in earnings (*i.e.,* affected employees). Specifically, the Department used 2019 data from the Current Population Survey (CPS) to identify the share of workers, by industry, who earned between the 2019 minimum wage for Federal contract employees, $7.40 per hour for tipped employees and $10.60 per hour for non-tipped employees, and $15 per hour.[31] [32] This ratio was then applied to the population of Federal contract employees.

2. Number of Affected Firms

The main data source used to estimate the number of affected firms is SAM. All entities bidding on Federal procurement contracts or grants must register in SAM. Using May 2021 SAM data, the Department estimated there are 428,300 registered firms.[33] The Department excluded firms with expired registrations, firms only applying for grants,[34] government entities (such as

[30] *See* 81 FR 9591, 9636–40 (analysis of workers affected by Executive Order 13706) and 79 FR 60634, 60693–95 (analysis of workers affected by Executive Order 13658).

[31] Before doing this calculation, the Department first dropped those earning less than $10.60 (and tipped workers earning less than $7.40), so this estimate is the share of workers who are already earning at least $10.60 for non-tipped workers and $7.40 for tipped workers.

[32] As discussed in Section IV.B.4.b, the Department used a separate methodology to estimate the number of affected workers in the U.S. territories because the CPS data did not include the territories.

[33] Data released in monthly files. Available at: *https://sam.gov/data-services/Entity%20Registration?privacy=Public.*

[34] Entities registering in SAM are asked if they wish to bid on contracts. If the firm answers ''yes,''

Continued

city or county governments), foreign organizations, and companies that only sell products and do not provide services. SAM provides the primary North American Industry Classification System (NAICS) for all companies.[35] [36]

SAM includes all prime contractors and some subcontractors (those who are also prime contractors or who have otherwise registered in SAM). However, the Department is unable to determine the number of subcontractors who are not in the SAM database. Therefore, the Department examined five years of USASpending data (2015 through 2019) [37] and found 33,500 unique subcontractors who did not hold contracts as primes in 2019 (and thus may not be included in SAM), and added these firms to the total from SAM (Table 2). This results in 461,800 potentially affected firms that may hold Federal contracts.

In addition, some entities operating on nonprocurement contracts are covered by Executive Order 14026. Estimating the number of covered firms involves many data sources and assumptions.[38] There are seven types of contracts included in this analysis of nonprocurement contracts (Table 3):

1. National Park Service (NPS) concessions contracts.
2. NPS Commercial Use Authorizations (CUAs).
3. U.S. Forest Service (FS) Special Use Authorizations (SUAs).
4. NPS special use permits.
5. Bureau of Land Management (BLM) special recreation permits.
6. Retail and concession leases in federally owned buildings.
7. Operations and concessions on military bases.

First, the Department estimated the number of contractors with NPS concessions contracts. The NPS website contains a list of entities operating under concessions contracts on NPS lands.[39] The Department downloaded all 441 records contained on the website, identified unique firms by name, and assigned them to industries based on the first type of ''service'' listed. This resulted in 401 unique entities operating under concessions contracts on NPS lands.

Second, the Department estimated the number of NPS CUAs. The Department informally consulted with the NPS and learned that the NPS had approximately 5,900 CUAs in FY 2015. An NPS CUA is a written authorization to provide services to park area visitors. *See* 36 CFR 18.2(c). The Department has assumed, solely for purposes of the economic analysis, that all NPS CUAs are contracts covered by the Executive order. Because the number of CUAs does not take into account that one firm may hold multiple authorizations, the Department multiplied the total number of CUAs by the ratio of unique firms holding NPS concessions contracts to total NPS concessions contracts (401 divided by 441 = 91 percent) for an estimated 5,340 unique firms with CUAs. The Department used the industry distribution from NPS concessions contracts to assign CUA permit holders to industries because industry information was not available.

Third, the Department estimated the number of FS SUAs. The Department informally consulted the FS, which informed the Department that 77,353 SUAs were in effect in FY 2015. FY 2015 data were the latest year of data available to DOL. Based on further informal consultations with the FS, the Department estimated that approximately 36 percent of these SUAs may be covered contracts.[40] No data are available to determine whether a contractor holds more than one permit; therefore, the Department used the NPS ratio of unique concessions contract holders to total concessions contract holders (91 percent) to estimate 25,076 unique contractors with FS permits. The Department used its best professional judgement to determine the relevant industry for each type of permit because data were not available.

Fourth, the Department estimated the number of affected NPS special use permits. During informal discussions, NPS officials estimated that it issued 33,735 special use permits in FY 2015.[41] FY 2015 data were the latest year of data available to DOL. It is likely that many of these permits will not be covered by the rulemaking, but the Department has no method for directly determining the number of such permits that might be covered. Therefore, the Department assumed, solely for purposes of the economic analysis, that the E.O. would cover 36 percent of NPS special use permits (the ratio of FS SUAs that are covered) and that 91 percent of the permits are held by unique contract holders (based on NPS data for CUAs). This resulted in an estimated 10,936 entities holding special use permits and covered by the rule. These permit holders were assigned to the ''arts, entertainment, and recreation'' industry.

Fifth, BLM reports 4,737 special recreation permits in FY 2019.[42] The Department again relied on the FS data to assume that 36 percent of these permits will be covered, and the NPS data to assume that 91 percent will be held by unique contractors.[43] This results in 1,536 entities holding BLM special recreation permits. The Department assumed that these are in the ''arts, entertainment, and recreation'' industry. These estimates for the NPS, FS, and BLM do not account for the possibility that the same firms may hold concessions contracts with more than one agency.

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then they are included as ''All Awards'' in the ''Purpose of Registration'' column. The Department included only firms with a value of ''Z2,'' which denotes ''All Awards.''

[35] The North American Industry Classification System is a method by which Federal statistical agencies classify business establishments in order to collect, analyze, and publish data about certain industries. Each industry is categorized by a sequence of codes ranging from 2 digits (most aggregated level) to 6 digits (most granular level). *https://www.census.gov/naics/.*

[36] In some instances the primary NAICS was listed as Public Administration, which is excluded from the analysis because it is not available for other data sources required (see section B.3.). Therefore, these companies are redistributed to other NAICS based on the current distribution.

[37] The Department included subcontractors from five years of data to compensate for lower-tier subcontractors that may not be included in *USASpending.gov.* The Department believes this is a reasonable approximation of the number of subcontractors.

[38] Those estimates primarily capture those covered contracts for concessions and contracts in connection with Federal property or lands and relating to services for Federal employees, their dependents, or the general public that are nonprocurement in nature, such that the contracting entities are not necessarily listed in SAM. However, the estimates will additionally capture some SCA-covered contracts because SCA-covered contracts, contracts for concessions and contracts in connection with Federal property or lands are to some degree overlapping categories of contracts (*e.g.,* at least some concessions contracts and contracts in connection with Federal property or lands are covered by the SCA, *see, e.g., Cradle of Forestry in America Interpretive Ass'n,* ARB Case No. 99–035, 2001 WL 328132 (ARB March 30, 2001)).

[39] Available at: *https://www.nps.gov/subjects/concessions/concessioners-search.htm.* The Department has assumed all NPS concessions contracts are covered by the E.O., solely for purposes of this economic analysis, primarily because the E.O. itself specifically covers concessions contracts.

[40] For each Forest Service ''use code'' (*e.g.,* ''111 boat dock and wharf''), the Department determined whether the authorizations are for commercial companies.

[41] According to NPS, activities that may require a special use permit include (but are not limited to) weddings, memorial services, special assemblies, and First Amendment activities. *See https://www.nps.gov/ever/learn/management/specialuse.htm.*

[42] U.S. Department of the Interior, Bureau of Land Management. (2020). Public Land Statistics 2019. *https://www.blm.gov/sites/blm.gov/files/PublicLandStatistics2019.pdf.*

[43] The Department believes it is reasonable to apply the 36 percent coverage estimates to NPS special use permits and BLM special recreation permits because it understands that these permits are likely for sufficiently similar purposes and entered into with sufficiently similar individuals and entities as the FS SUAs.

Sixth, the Department estimated the number of retail and concession leases in federally owned buildings. Data are not available on the prevalence of these contracts, but during the 2016 rulemaking implementing Executive Order 13706's paid sick leave requirements that covered a similar population, the Department estimated there were a total of 1,120 unique entities (1,232 entities times 91 percent assumed to be held by unique contractors). To account for blind vendors who enter into operating agreements with states who obtain contracts or permits from Federal agencies to operate vending facilities on Federal property under the Randolph-Sheppard Act, the Department has added 767 contractors to its estimate.[44] However, the Department notes that some of these vendors may already be counted in the 1,120 estimate. The Department assumed these entities are in the ''retail trade'' and ''accommodation and food services'' industries.

Seventh, to account for operations and concessions on military bases, the Department identified that the Army and Air Force, the Navy, the Marine Corps, and the Coast Guard have bases with retail and concessions contracts. These include both the military Exchanges and private companies with concessions contracts to operate on base. The Department counted each of the branch's Exchange organizations as one firm. Based on general information about services on bases, the Department assumed these entities are in the ''retail trade'' and ''accommodation and food services'' industries. According to Exchange and Commissary News (a business magazine), the Army & Air Force Exchange Service (AAFES) has 586 concessions contracts.[45] The Department assumed each is with a unique firm and that these entities are not listed in SAM. The Department also assumed that 68 percent of these concessions contracts are domestic, resulting in an estimated 401 concessions contracts.[46]

Data are not available on the number of concessions contracts for other branches of the military. However, data are available on the number of name-brand fast-food establishments at AAFES, Navy Exchange Service Command (NEXCOM), and the Marine Corps Exchange (MCX). The Department assumed the distribution of fast-food establishments across branches is similar to the distribution of total concessions contracts. The Department calculated the ratio of the number at NEXCOM or MCX fast-food establishments relative to AAFES and then multiplied that ratio by the 401 AAFES concessions contracts.[47] In total, the Department estimates 553 concessions contracts (401 for AAFES, 119 for NEXCOM, and 33 for MCX).

In total, this final rule estimates 507,200 potentially affected firms. Table 2 summarizes the estimated number of affected contractors by contract nexus and industry. The Department believes this is likely an upper bound on the number of affected firms because some of these firms may not have Federal contracts and even some of those with contracts may not have workers earning below $15 per hour. To demonstrate, the Department also used *USASpending.gov* data as an alternative way to estimate the number of contractors with SCA and DBA contracts. In 2019, there were 88,800 prime contractors with potentially affected employees from USASpending. This is significantly lower than the 428,300 firms registered in SAM and used in this analysis. The Department chose to use the data from SAM to ensure the entire population of potentially affected firms is captured. Additionally, firms without active contracts may incur some regulatory familiarization costs if they plan to bid on future Federal contracting work.

TABLE 2—NUMBER OF POTENTIALLY AFFECTED CONTRACTORS

Industry	NAICS	Total potentially affected firms	Firms from SAM	Subcontractors	Federal prop. and lands
Agriculture, forestry, fishing & hunting	11	5,895	5,808	1	86
Mining	21	1,209	1,100	44	65
Utilities	22	5,144	2,613	52	2,479
Construction	23	60,316	52,149	7,941	226
Manufacturing	31–33	55,731	47,283	8,417	31
Wholesale trade	42	20,335	19,686	649	0
Retail trade	44–45	10,683	8,292	31	1,833
Transportation and warehousing	48–49	22,194	15,897	401	5,896
Information	51	19,601	13,400	329	5,872
Finance and insurance	52	3,713	3,665	48	0
Real estate and rental and leasing	53	20,318	20,317	1	0
Professional, scientific, and technical	54	119,543	107,411	11,622	510
Management of companies & enterprises	55	551	551	0	0
Administrative and waste services	56	39,433	35,203	3,581	649
Educational services	61	17,210	16,889	250	71
Health care and social assistance	62	36,676	36,629	17	30
Arts, entertainment, and recreation	71	29,209	4,911	0	24,298
Accommodation and food services	72	15,622	12,474	7	3,141
Other services	81	24,366	24,005	94	267
Total private	.....	507,222	428,283	33,485	45,454

[44] DOL communications with the Department of Education.

[45] Exchange and Commissary News. (2017). Exchange QSR Clicks with Customers. *http://www.ebmpubs.com/ECN_pdfs/ecn0517_AAFESQSRNBFF.pdf.*

[46] This is the share of AAFES net sales that occur domestically. AAFES Annual Report 2019. *https://publicaffairs-sme.com/Community/wp-content/uploads/2020/06/2019AnnualReportDigi.pdf.*

[47] Exchange and Commissary News. (2014). Military Exchange Name-Brand Fast Food Portfolios. *http://www.ebmpubs.com/ECN_pdfs/ecn0714_NBFF.pdf.*

TABLE 3—NUMBER OF POTENTIALLY AFFECTED FIRMS ON FEDERAL PROPERTIES AND LANDS

NAICS	NPS concessions	NPS CUAs	NPS special use permits	Forest Service SUAs	BLM special recreation permits	Public buildings	Federal bases
11	0	0	0	86	0	0	0
21	0	0	0	65	0	0	0
22	0	0	0	2,479	0	0	0
23	0	0	0	226	0	0	0
31–33	0	0	0	31	0	0	0
42	0	0	0	0	0	0	0
44–45	50	666	0	35	0	944	139
48–49	142	1,891	0	3,863	0	0	0
51	1	13	0	5,858	0	0	0
52	0	0	0	0	0	0	0
53	0	0	0	0	0	0	0
54	0	0	0	510	0	0	0
55	0	0	0	0	0	0	0
56	28	373	0	248	0	0	0
61	0	0	0	71	0	0	0
62	2	27	0	2	0	0	0
71	113	1,505	10,936	10,209	1,536	0	0
72	63	839	0	1,157	0	944	139
81	2	27	0	238	0	0	0
	401	5,340	10,936	25,076	1,536	1,887	278

3. Number of Potentially Affected Employees

There are no Government data on the number of employees working on Federal contracts; therefore, to estimate the number of Federal contract employees, the Department employed the approach used in the 2016 rulemaking implementing Executive Order 13706's paid sick leave requirements, which was an updated version of the methodology used in the 2014 rulemaking for Executive Order 13658.[48] The Department estimated the number of employees who work on Federal contracts that will be covered by Executive Order 14026, representing the number of ''potentially affected employees'' (1.8 million). Additionally, the Department estimated the share of potentially affected employees who will receive wage increases as a result of the Executive order. These employees are referred to as ''affected'' (327,300).

The Department estimated the number of potentially affected employees in three parts. First, the Department estimated employees and self-employed workers working on SCA and DBA procurement contracts in the fifty states and Washington, DC Second, the Department estimated the number of employees and self-employed workers working on SCA and DBA procurement contracts in the U.S. territories. Third, the Department estimated the number of potentially affected employees on nonprocurement concessions contracts and contracts on Federal property or lands (some of which would also be SCA-covered).

a. SCA and DBA Procurement Contracts in the Fifty States and Washington, DC

SCA and DBA contract employees on covered procurement contracts were estimated by taking the ratio of Federal contracting expenditures (''Exp'') to total output (Y), by industry. Total output is the market value of the goods and services produced by an industry. This ratio is then applied to total private employment in that industry (''Emp'') (Table 4). This analysis was conducted at the 2-digit NAICS level.

$$Potentially\ Affected\ Emp_i = \frac{Exp_i}{Y_i}\ x\ Emp_i$$

Where i = 2-digit NAICS

The Department used Federal contracting expenditures from *USASpending.gov* data, which tabulates data on Federal contracting through the FPDS–NG. According to 2019 data (used to avoid any potential impacts of COVID–19), the government spent $312 billion on service contracts in 2019 with a place of performance in the fifty states or Washington, DC. This excludes (1) financial assistance such as direct payments, loans, and insurance; (2) contracts performed outside the fifty states or Washington, DC (because contracts performed in the U.S. territories are addressed later); and (3) expenditures on goods purchased by the Federal government because the final rule does not apply to contracts for the manufacturing and furnishing of materials and supplies.[49]

To determine the share of all output associated with Government contracts, the Department divided industry-level contracting expenditures by that industry's gross output.[50] For example, in the information industry, $10.1 billion in contracting expenditures was divided by $1.9 trillion in total output, resulting in an estimate that covered Government contracts comprise 0.52 percent of every dollar of output in the information industry.

The Department then multiplied the ratio of covered-to-gross output by private sector employment to estimate the share of employees working on

[48] *See* 81 FR 9591, 9591–9671 and 79 FR 60634–60733.

[49] For example, the government purchases pencils; however, a contract solely to purchase pencils would not be covered by the Executive order. Contracts for goods were identified in the *USASpending.gov* data if the product or service code begins with a number (services begin with a letter).

[50] ''Gross output (GO) is the value of the goods and services produced by the nation's economy. It is principally measured using industry sales or receipts, including sales to final users (GDP) and sales to other industries (intermediate inputs).'' Bureau of Economic Analysis. (2020). Table 8. Gross Output by Industry Group. *https://www.bea.gov/news/2020/gross-domestic-product-industry-fourth-quarter-and-year-2019.*

covered contracts for each 2-digit NAICS industry. Private sector employment is from the May 2019 Occupational Employment and Wage Statistics (OEWS), formerly the Occupational Employment Statistics.[51] [52] All workers performing services on or in connection with a covered contract are covered by the Executive order and this final rule, however, unincorporated self-employed workers are excluded from the OEWS. Thus, the OEWS data are supplemented with data from the 2019 Current Population Survey Merged Outgoing Rotation Group (CPS MORG) to include unincorporated self-employed in the estimate of covered workers. To demonstrate, in the information industry, there were approximately 3.0 million private sector employees in 2019 and covered Government contracts comprise 0.52 percent of every dollar of gross output. The Department multiplied 3.0 million by 0.52 percent to estimate that the Executive order will potentially affect 15,400 workers on covered procurement contracts in the information industry.[53]

This methodology represents the number of year-round equivalent potentially affected employees who work exclusively on covered Federal contracts. Thus, when the Department refers to potentially affected employees in this analysis, the Department is referring to this illustrative number of employees who work exclusively on covered Federal Government contracts. The number of employees who will experience wage increases will likely exceed this number since all affected workers may not work exclusively on Federal contracts. Implications of this for costs and transfers are discussed in the relevant sections.

TABLE 4—NUMBER OF POTENTIALLY AFFECTED EMPLOYEES IN THE FIFTY STATES AND DC

NAICS	Private employees (1,000s) [a]	Total private output (billions) [b]	Covered contracting output (millions) [c]	Share output from covered contracting (%)	Employees on SCA and DBA contracts (1,000s) [d]	Employees on federal lands and concessions (1,000s) [e]	Total contract employees (1,000s)
11	1,168	$450	$408	0.09	1	0	1.1
21	699	577	103	0.02	0	0	0.2
22	547	498	2,399	0.48	3	4	6.7
23	9,100	1,662	35,692	2.15	195	3	197.9
31–33	12,958	6,266	28,603	0.46	59	0	59.3
42	5,955	2,098	161	0.01	0	0	0.5
44–45	16,488	1,929	327	0.02	3	37	39.4
48–49	6,215	1,289	14,217	1.10	69	119	187.2
51	2,971	1,942	10,076	0.52	15	23	38.2
52	6,180	3,161	12,482	0.39	24	0	24.4
53	2,699	4,143	931	0.02	1	0	0.6
54	10,581	2,487	150,888	6.07	642	9	650.6
55	2,470	675	0	0.00	0	0	0.0
56	10,158	1,141	36,313	3.18	323	14	337.3
61	3,271	381	4,250	1.11	36	1	37.2
62	20,791	2,648	11,099	0.42	87	0	87.5
71	2,949	382	81	0.02	1	17	17.4
72	14,303	1,192	1,018	0.09	12	33	45.6
81	5,260	772	2,686	0.35	18	1	18.9
Total	134,761	33,691	311,733	0.93	1,491	259	1,750

[a] OEWS May 2019. Excludes Federal U.S. Postal service employees, employees of government hospitals, and employees of government educational institutions. Added to the OEWS employee estimates were unincorporated self-employed workers from the 2019 CPS MORG data.
[b] Bureau of Economic Analysis, national income and product account (NIPA) Tables, Gross output. 2019.
[c] *USASpending.gov.* Contracting expenditures for covered contracts in 2019.
[d] Assumes share of expenditures on contracting is same as share of employment. Assumes employees work exclusively, year-round on Federal contracts. Thus, this may be an underestimate if some employees are not working entirely on Federal contracts.
[e] Calculated by multiplying the number of firms by the average employees per firm.

b. SCA and DBA Procurement Contracts in the U.S. Territories

The methodology to estimate potentially affected workers in the U.S. territories is similar to the methodology above. The primary difference is that data on gross output in the territories are not available, and so the Department had to make some assumptions. Federal contracting expenditures from *USASpending.gov* data show that the Government spent $1.8 billion on service contracts in 2019 in Puerto Rico, Guam, and the U.S. Virgin Islands. Other territories were excluded from this analysis because necessary data are not available (*i.e.,* OEWS employment data which are used to estimate number of potentially affected workers, and OEWS wage data which are used to estimate affected workers).[54] The Department approximated gross output in these three territories by calculating the ratio of the Gross Domestic Product (GDP) to total gross output for the U.S., then applying that ratio to GDP in each territory. For example, the Department estimated that Puerto Rico's gross output totaled $140.5 billion.[55]

The rest of the methodology follows the methodology for the fifty states and Washington, DC. To determine the share of all output associated with

[51] Bureau of Labor Statistics. Occupational Employment and Wage Statistics. May 2019. Available at: *http://www.bls.gov/oes/.*

[52] Some adjustments were made to the OEWS employment estimates to make the population more consistent with BEA's gross output and better reflect private employment. The Department excluded Federal U.S. Postal service employees, employees of government hospitals, and employees of government educational institutions.

[53] Note that the number of employees aggregated across industries does not match the total number of employees derived using totals due to the order of operations of multiplying and summing (*i.e.,* the sum of the products is not equal to the product of the sums).

[54] The other territories comprise a very small share of Federal contracting expenditure and thus the impact of their exclusion from this analysis is expected to be very small (0.1 percent of all Federal contracting expenditures in 2019). This includes American Samoa and the Commonwealth of the Northern Mariana Islands.

[55] In the U.S. the sum of personal consumption expenditures and gross private domestic investment (the relevant components of GDP) was $17.6 trillion in 2018, while gross output totaled $33.7 trillion. In Puerto Rico, personal consumption expenditures plus gross private domestic investment in 2018 (most recent data available) equaled $73.4 billion. Therefore, Puerto Rico gross output was calculated as $73.4 billion × ($33.7 trillion/$17.6 trillion).

Government contracts, the Department divided contracting expenditures by gross output. The Department then multiplied the ratio of covered contract spending to gross output by private sector employment to estimate the share of employees working on covered contracts.[56] This analysis was not conducted at the industry level because GDP data for the territories is not available by NAICS. Additionally, the number of USASpending observations in some industries is very small, making estimates imprecise. The Department estimated 11,800 employees will be potentially affected in Puerto Rico, Guam, and the U.S. Virgin Islands.

c. Nonprocurement Concessions Contracts and Contracts on Federal Properties or Lands

The above analysis found 1.5 million potentially affected employees on SCA and DBA contracts. However, the employees of entities operating under covered nonprocurement contracts on Federal property or lands may not be included in that total. To account for these employees, the Department used a variety of sources. First, the Department estimated the number of entities operating under covered nonprocurement contracts on Federal property or lands (section IV.B.2.). Then the Department multiplied the number of contracting firms by the number of potentially affected employees per contracting firm, by industry. This ratio was calculated by dividing the potentially affected employees on direct contracts by the number of contractors (prime and subcontractors) with potentially affected employees from USASpending. For example, in the information industry, there are 15,400 potentially affected workers in 4,000 entities, for an average of 3.9 potentially affected workers per firm. This estimate of potentially affected workers per firm is multiplied by the estimated 5,872 entities in the information industry operating under covered nonprocurement contracts on Federal property or lands, resulting in 22,800 potentially affected employees in these firms.

The exception to the above methodology is for employees of military Exchanges. These 41,500 employees are directly included because Exchanges are very large employers and using the ratio method above would underestimate employment.[57] The AAFES employs 35,000 employees,[58] NEXCOM employs 13,000 associates,[59] and MSX employs 12,000 workers.[60] Data on employment for the Coast Guard Exchange (CGX) was not available and so the Department estimated there are 613 employees.[61] These numbers were then reduced by 32 percent to remove employees stationed overseas, based on the share of AAFES net sales that occur outside the continental U.S.[62] Summing these calculations over all industries results in an additional 259,300 covered employees for a total of 1.8 million potentially affected employees.

d. Additional Considerations

Because the Executive order's requirements only apply to certain contracts entered into, renewed, or extended after January 30, 2022, some of these potentially affected workers may not be impacted in the first year after implementation. However, the Department believes the majority will be impacted in Year 1. For example, section 9(c) of the Executive order ''strongly encourage[s]'' agencies administering existing contracts ''to ensure that the hourly wages paid under such contracts or contract-like instruments are consistent with the minimum wages specified [under the order].'' Additionally, if workers are staffed on more than one contract, contractors may increase the workers' hourly wage rates on all contracts as soon as any one of the contracts is impacted. Lastly, rather than increasing pay for only a subset of their workers, some employers may increase wages for all potentially affected workers earning less than $15 per hour at the time their first contract is affected (rather than paying different wage rates to employees working on new contracts and employees working on existing contracts). For these reasons, the Department included all workers in the analysis of Year 1 impacts. This assumption may result in an overestimate of Year 1 impacts, but the Department believes it is preferable to overestimate transfers in Year 1 than to underestimate transfers because of uncertainty when contractors will be affected.

While some SCA contracts are for terms of more than a year (and hence may not be covered by Executive Order 14026 for several years if the contract was entered into in the last year or two), many consist of a base term of one year followed by a series of 1-year option periods. Executing a new option year under such a contract will trigger the Executive order's provisions. It is reasonable to assume that many such contracts (whether base or option period) will be entered into during the first effective year.

The Department notes that at first glance the estimated number of potentially affected firms (507,200) and potentially affected employees (1.8 million) may seem inconsistent because this is an average of only 3.5 potentially affected employees per contracting firm. This perceived inconsistency is partially due to the two separate data sources used (SAM and USAspending) and the fact that the number of affected firms is likely overestimated to ensure costs are not underestimated. For example, the number of potentially affected firms includes firms without active contracts and potentially some firms that only supply products. If the number of firms in USASpending is used instead of SAM, the Department estimates that there are 167,800 firms (88,800 prime contractors in USASpending, 33,500 subcontractors from USASpending, and 45,500 entities with contracts on Federal property or lands) with 10.5 potentially affected employees per firm. Additionally, it is helpful to recall that the estimate of potentially affected employees represents employees working exclusively and year-round on covered contracts. This may only be a segment of a contracting firm's workforce.

4. Number of Affected Employees

The Department estimates that of the 1.8 million potentially affected employees identified above, 327,300 will be affected and see an increase in wages. The Department performed calculations for workers in the fifty states and Washington, DC, then seperately for the territories due to data limitations for the territories. This section concludes by projecting affected workers in future years.

a. Affected Workers in the Fifty States and Washington, DC

The Department used the 2019 Current Population Survey Merged Outgoing Rotation Groups (CPS MORG)

[56] For the U.S. territories, the unincorporated self-employed are excluded because CPS data are not available on the number of unincorporated self-employed workers in U.S. territories.

[57] Many of these employees are Federal employees, but because it may include some contractors, the Department has chosen to include these workers in the analysis.

[58] AAFES. (2019). *Exchange Fact Sheet 2019. https://www.aafes.com/Images/AboutExchange/factsheet2017b.pdf.*

[59] Navy Supply Systems Command. (2020). *2019 Navy Exchange Service Command Annual Report. https://www.mynavyexchange.com/assets/Static/NEXCOMEnterpriseInfo/AR19.pdf.*

[60] Marine Corps Community Services. (n.d.). *About Us. https://usmc-mccs.org/about/.*

[61] Calculated by taking the ratio of CGX facilities to MSX facilities (5 percent) and multiplying by the number of Marine Corps employees (12,000).

[62] AAFES. (2020). *2019 Mission Report. https://publicaffairs-sme.com/Community/wp-content/uploads/2020/06/2019AnnualReportDigi.pdf.*

to estimate the percentage of workers in the fifty states and Washington, DC earning between the applicable 2019 minimum wage for federal contractors and $15.[63] [64] [65] In 2019, the applicable minimum wage rates under Executive Order 13658 were $10.60 for non-tipped workers and $7.40 for tipped workers. The Department used 2019 data due to concerns that because of effects attributable to the COVID–19 pandemic, 2020 data may not accurately reflect the affected workforce.

The Department limited its analysis to employed individuals in the private sector (with a class of worker of ''private, for profit'' or ''private, nonprofit''). Earnings for self-employed workers are not included in the CPS MORG; therefore, the Department assumed the wage distribution for self-employed workers was similar to that for employees. The Department used the hourly rate of pay variable for hourly workers[66] and calculated an hourly rate based on usual weekly earnings and usual hours worked per week for non-hourly workers.[67] [68] The Department excluded workers with unlikely wages or earnings—*i.e.,* those who reported usually earning less than $50 per week (including overtime, tips, and commissions) and workers with an hourly rate of pay less than $1 or more than $1,000.

Some non-hourly workers had missing hourly wage rates, primarily because they respond that usual hours per week vary.[69] The Department distributed the weights of the non-hourly workers with missing hourly rates to non-hourly workers with valid hourly wage rates, then dropped the workers with missing hourly rates.

To ensure the appropriate denominator for the percentage of workers earning an hourly rate in the affected range, the Department dropped workers earning less than the 2019 rate required by Executive Order 13658. First, the Department defined tipped workers as those in occupations of ''Waiters and waitresses'' or ''Bartenders'' and in the ''Restaurants and other food services'' or ''Drinking places, alcoholic beverages'' industries.[70] The Department dropped tipped workers earning less than $7.40 per hour and non-tipped workers earning less than $10.60 per hour.[71] Lastly, the Department calculated the share of workers earning less than $15 per hour by 2-digit NAICS code industry (Table 5).

This method assumes that the distribution of wages is similar between Federal Government contract employees and the broader workforce, as there is not a reputable source for data on wages paid to Federal contract employees. If covered workers' wages are higher, then this will result in an overestimate of transfers. The Department requested comments and data on the earnings of Federal Government contract employees but did not receive any applicable responses.

The methodology to estimate potentially affected workers captures tipped workers earning less than $15 per hour. However, the rule only requires tipped workers to be paid a minimum cash wage of $10.50 in 2022, with incremental increases until parity with non-tipped workers is reached on January 1, 2024. Therefore, the Department may overestimate transfers for tipped workers in the first two years after this rulemaking taking effect. The Department believes this potential bias is small because contractors on the most commonly occurring DBA- and SCA-covered contracts rarely engage tipped employees on or in connection with such contracts. Additionally, as was the case with the 2014 rulemaking implementing Executive Order 13658,[72] the Department received no data from interested commenters indicating that a significant number of tipped employees would be covered by that Executive order.

Multiplying these shares of workers earning below $15 per hour by the estimated number of employees covered by this rule yields an estimated 320,100 affected employees in Year 1 (Table 5). Although employees on some covered contracts may not be affected in Year 1, the Department assumes all are affected to ensure impacts are not underestimated (*see* section IV.B.3. for a discussion on this assumption).

[63] The Department used the CPS file compiled by the National Bureau of Economic Research, available at *https://data.nber.org/morg/annual/*.

[64] Although a rate of $15 per hour will not be required for new contracts until January 30, 2022, the Department chose to use $15 in the 2019 CPS MORG data because of the uncertainty of the appropriate deflator to apply to identify workers in the affected range of wage rates. This likely contributes to an overestimate of the number of affected workers.

[65] The Department has not used state-specific wage distributions here, because there are very few instances in which the place of performace for a contract is definitively known. Additionally, the CPS sample sizes are too low to get reliable state level estimates that are also broken down by industry. If the distribution of contract spending across states is different from the geographic distribution of total employment, then there could be a difference in estimates based on national and state wage distributions.

[66] This variable excludes overtime pay, tips, and commissions. Commissions can count towards the $15 per hour minimum wage and therefore, excluding these will result in an overestimate of affected workers and consequently transfer payments. The impact of excluding tips is discussed below.

[67] For non-hourly workers who usually work more than 40 hours per week, the Department calculated an hourly rate based on these workers being paid the overtime premium for hours worked per week above 40. For example, the Department calculated an hourly rate of $20 for a non-hourly worker who reported usually earning $950 per week and usually working 45 hours per week (($20 × 40 hours) + ($20 × 1.5 × 5 hours) = $950). This assumes that none of these non-hourly workers are exempt from the overtime provision of FLSA.

[68] As explained earlier, §§ 23.20 and 23.40 exclude workers employed in a bona fide executive, administrative, or professional (EAP) capacity, as those terms are defined in 29 CFR part 541, from the requirements of Executive Order 14026. Among other requirements, these workers generally must be paid, on a salary or fee basis, a certain minimum amount, which increased from $455 per week to $684 per week on January 1, 2020. *See* 29 CFR 541.600 through 541.606; 84 FR 51230 (increasing the standard salary level generally required to exempt a worker as an EAP from $455 per week to $684 per week). However, due to uncertainties regarding whether and to what extent non-hourly workers earning at or below the equivalent of $15 per hour perform the requisite job duties to qualify as bona fide EAPs, the Department has not accounted for EAPs in its estimate of affected workers. The Department estimated that by assuming all non-hourly workers who earned at least $455 per week in 2019 are exempt, the number of affected workers would decrease by 18 percent. Using the current salary level of $684 per week as the threshold for the EAP exemption would reduce the number of affected workers by 7 percent. These are overestimates, because there are millions of workers who meet the part 541 salary criteria who do not qualify for the EAP exemption due to their job duties. *See, e.g.,* 84 FR 51257 (Figure 1).

[69] The other reason the imputed hourly wage rate may be missing is if usual hours worked per week is zero, but this accounts for less than one percent of workers with missing hourly rates.

[70] To the extent that there are tipped workers in other industries, the Department may have excluded some tipped workers earning between $7.40 and $10.60 per hour. However, the Department believes that there are few tipped employees working on Federal contracts who would be covered by this final rule.

[71] About 10 percent of tipped workers report being paid nonhourly. These workers may have tips included in the hourly rate calculated here because there is no way to determine how much of usual weekly pay is tips. To the extent that any of these nonhourly tipped workers have tips included in their calculated hourly rate, this would result in a slight overestimation of the average hourly rate for all tipped workers.

[72] *See* 79 FR 60696.

TABLE 5—EMPLOYEES WITH HOURLY WAGES IN THE AFFECTED RANGE, BY INDUSTRY

NAICS	Total employees (1,000s)	Share below $15 (%)	Affected employees (1,000s)
11	1.10	48	0.5
21	0.18	9	0.0
22	6.67	7	0.4
23	197.94	15	30.0
31–33	59.29	17	10.3
42	0.46	17	0.1
44–45	39.38	39	15.2
48–49	187.20	23	42.3
51	38.18	13	4.9
52	24.41	10	2.4
53	0.61	18	0.1
54	650.64	7	48.1
55	0.00	19	0.0
56	337.31	31	104.5
61	37.18	16	6.1
62	87.52	21	18.8
71	17.38	33	5.6
72	45.57	55	25.1
81	18.91	29	5.5
Sum across NAICS	1,749.91	N/A	320.1
Territories	11.80	61	7.2
Total	1,761.7	N/A	327.3

Executive Order 13838 presently exempts contracts entered into with the Federal Government in connection with seasonal recreational services and also seasonal recreational equipment rental for the general public on Federal lands from coverage of Executive Order 13658.[73] Executive Order 14026 revokes Executive Order 13838 as of January 30, 2022. The Department believes these currently exempt workers are already captured in the number of ''potentially affected'' workers—*i.e.,* all workers on federal contracts of the kind covered by Executive Order 14026. However, the methodology to estimate ''affected'' workers may not adequately capture all of these seasonal workers because their wages may not be between $10.60 and $15 per hour (*i.e.,* they may earn as low as $7.25 per hour). The Department believes that the number of workers potentially missing is very small. In the final rule implementing Executive Order 13838, the Department estimated there were 1,191 affected employees (*i.e.,* exempt seasonal workers earning between $7.25 and $10.30 per hour).[74] A similar number is likely missing from the current analysis because they earn less than $10.60 per hour. Affiliated Outfitter Associations (AOA) asserted that the Department has grossly underestimated the number of seasonal recreation workers. They point to the fact that the ''Grand Canyon National Park alone has over 1,000 seasonal recreational workers.'' However, these numbers are not comparable. The Department's estimate of 1,191 is the number of workers potentially underestimated, not the total number of workers currently exempt under Executive Order 13838. Also, with respect to the specific example given, the Department further notes that the state of Arizona's minimum wage in 2019 was $11 per hour, which was above the Executive Order 13658 minimum wage rate of $10.60 per hour. The Department's methodology should not result in any underestimate for seasonal recreation workers in any state where such workers were paid a minimum wage above $10.60 per hour in 2019.

b. Affected Workers in U.S. Territories

Because the CPS MORG does not include the U.S. territories, the Department used the May 2019 OEWS data to estimate the percentage of workers in Puerto Rico, Guam, and the U.S. Virgin Islands who earn less than $15 per hour.

The OEWS reports wage percentiles for Puerto Rico, Guam, and the U.S. Virgin Islands. The Department used these percentiles and a uniform distribution to infer the percentile associated with $15 per hour. The Department then applied this percentile to the population of potentially affected workers. For example, in Puerto Rico, the Department estimated that 71 percent of the 4,500 potentially affected employees (3,200 workers) earn less than $15 per hour. In total, the Department estimated 7,200 workers will be affected in these three U.S. territories.

c. Affected Worker Projections

To estimate the number of affected workers in later years, the Department first considered whether workers affected in Year 1 will continue to experience wage increases as a result of this final rule in Years 2 through 10. The Department assumes they will because the Executive Order 14026 minimum wage will continue to increase on an annual basis according to inflation, as measured by the CPI–U. In the absence of this final rule, the Department assumes that affected workers' wages would increase at the rate required under Executive Order 13658, which also increases on an annual basis according to the CPI–U. Therefore, workers affected by this rule in Year 1 will continue to experience a comparably higher wage rate than they otherwise would in Years 2 through 10, but would still have experienced wage rate increases under the baseline situation.

The Department accounted for employment growth by using the compounded annual growth rate based on the ten-year employment projection

[73] Establishing a Minimum Wage for Contractors, Notice of Rate Change in Effect as of January 1, 2019. 83 FR 44906.

[74] Executive Order 13838 generally exempted from the requirements of Executive Order 13658 contracts with the Federal Government in connection with seasonal recreational services or seasonal recreational equipment rental on Federal lands.

for 2019 to 2029 from the Bureau of Labor Statistics' (BLS') Employment Projections program.[75] In Year 10, there will be 345,600 affected workers.

The number of affected workers in Year 1 implicitly takes into account current state minimum wages by looking at the distribution of wage rates paid. If states increase their minimum wages in the future, and the current method is applied to those future years, then affected workers or transfers associated with increased wages could be somewhat lower than estimated.

5. Demographics of Employees in the Affected Wage Rate Ranges

This section presents demographic and employment characteristics of the general population of workers in the affected wage rate ranges. The Department notes that the demographic characteristics of Federal contractors may differ from the general population in the affected hourly wage rate ranges; however, data on the demographics of only affected workers are not available.

These tables include the distribution of workers who earn in the affected wage rate range. The tables also show the distribution of the general workforce. This could be used to identify whether a certain group is more or less likely to be impacted by this rule. For example, if the percentage reported in column 3 is higher than the percentage reported in column 2, then workers in that group are overrepresented.

Table 6 presents the occupation and geographic location of workers currently earning in the affected wage rate range. The Department found that workers in management, business, and financial occupations are less likely to earn in the wage range potentially impacted by this Executive order (5.1 percent of workers in the affected range are in this occupation compared to 16.1 percent of the general population), while workers in service occupations are significantly more likely to earn in the affected wage range. Workers in the Northeast and Midwest are somewhat less likely to earn in the affected wage range, and workers in the West and South are somewhat more likely to earn in the affected range, but the variation is small. Workers in non-metropolitan areas are more likely to earn in the affected range.

TABLE 6—OCCUPATION AND GEOGRAPHIC LOCATION OF WORKERS WHO EARN IN THE AFFECTED WAGE RATE RANGE

	Distribution of all workers (%)	Distribution of workers with wages in the affected range (%)
By Occupation		
Management, business, & financial	16.1	5.1
Professional & related	13.9	5.7
Services	23.7	33.9
Sales and related	10.9	14.3
Office & administrative support	12.1	15.4
Farming, fishing, & forestry	0.8	1.9
Construction & extraction	5.3	4.1
Installation, maintenance, & repair	3.4	2.2
Production	6.7	8.4
Transportation & material moving	7.0	9.0
By Region/Division		
Northeast:	18.1	16.6
New England	5.1	4.7
Middle Atlantic	12.9	11.9
Midwest:	21.8	21.2
East North Central	15.0	14.3
West North Central	6.9	7.0
South:	36.8	37.2
South Atlantic	19.3	19.5
East South Central	5.5	5.6
West South Central	12.0	12.0
West:	23.3	25.0
Mountain	7.4	8.1
Pacific	15.8	16.9
By Metropolitan Status		
Metropolitan	88.7	86.5
Non-metropolitan	10.7	12.6
Not identified	0.6	0.9

Note: CPS data for 2019.

Table 7 displays the demographics of workers who currently earn in the affected wage rate range. The Department found that women, Black workers, and Hispanic workers are more likely to earn in the wage range

[75] BLS, Employment Projections. (2021). Table 2.1 Employment by Major Industry Sector. *https://www.bls.gov/emp/tables.htm.*

impacted by this final rule. Additionally, workers 16 to 25 and workers without any college education are more likely to earn in that range.

TABLE 7—DEMOGRAPHICS OF WORKERS WHO EARN IN THE AFFECTED WAGE RATE RANGE

	Distribution of all workers (%)	Distribution of workers with wages in the affected range (%)
By Sex		
Male	53.3	45.6
Female	46.7	54.4
By Race		
White only	77.1	74.5
Black only	12.4	15.7
All others	10.5	9.8
By Ethnicity		
Hispanic	18.1	25.7
Not Hispanic	81.9	74.3
By Age		
16–25	16.7	29.5
26–35	24.5	23.7
36–45	20.7	15.8
46–55	19.2	14.6
56+	19.0	16.4
By Education		
No degree	8.9	14.7
High school diploma	45.2	60.8
Associate's degree	10.7	10.4
Bachelor's degree	23.7	11.1
Master's degree	8.5	2.2
Professional degree	1.3	0.4
PhD	1.8	0.4

Note: CPS data for 2019.

C. Impacts of the Final Rule

1. Overview

This section quantifies direct employer costs and transfer payments (*i.e.,* wage increases) associated with the final rule. These impacts were projected for 10 years. The Department estimated average annualized direct employer costs of $2.4 million and transfer payments of $1.8 billion. As these numbers demonstrate, the largest quantified impact of the final rule will be the transfer of income from employers to employees. The Department also discusses the many benefits of this rule qualitatively and asserts that they will offset any direct employer costs.

2. Costs

The Department quantified two direct employer costs: (1) Regulatory familiarization costs and (2) implementation costs. Other employer costs are considered qualitatively.

a. Regulatory Familiarization Costs

The final rule will impose direct costs on covered contractors by requiring them to review the regulations. The Department believes that all Federal contracting firms that have or expect to have covered contracts will incur some regulatory familiarization costs because all firms will need to determine whether they are in compliance. The Department assumed that on average, one half-hour of a human resources manager's time will be spent reviewing the rulemaking. During the 2014 rulemaking implementing Executive Order 13658's minimum wage requirements, the Department used one hour of time. The Department has used a smaller time estimate here because most of the affected firms will already be familiar with the previous requirements and will only have to familiarize themselves with the parts that have changed (predominantly the level of the minimum wage). Additionally, this is the average amount of time spent. The Department believes that many of the potentially affected firms will have little to no regulatory familiarization costs because they are not practically affected (*e.g.,* they do not hold active government contracts or all their workers already earn at least $15 per hour.) However, if review of regulations occurs at the establishment level, the Department's regulatory familiarization costs may be underestimated.

The Department requested comments on the estimated time spent on regulatory familiarization. A few commenters asserted that the time estimates were low. The AOA, for example, asserted that the half-hour time estimate is vastly underestimated. In particular, they note that a half-hour is not enough time to review an 82 page proposed rulemaking. As discussed above, the Department has used a small time estimate here because most of the affected firms will already be familiar with the previous requirements and will

only have to familiarize themselves with the parts that have changed (predominantly the level of the minimum wage). This estimate represents an assumption about the average time spent across all firms; many will have negligible or no familiarization costs. If some firms take longer than a half-hour to review the rule, it is not inconsistent with the Department's average estimate. Additionally, the Department notes that many firms may not need to review the entire proposed or final rulemaking to determine if and how it applies to them because they will likely review summary materials provided by the Department.

The cost of this time is the median loaded wage for a Compensation, Benefits, and Job Analysis Specialist of $52.65 per hour.[76] Therefore, the Department has estimated regulatory familiarization costs to be $13.4 million ($52.65 per hour × 0.5 hours × 507,200 contractors) (Table 8). The Department has included all regulatory familiarization costs in Year 1. The Department believes firms will need to familiarize themselves with the rule in Year 1 in order to identify whether any contracts will be covered in Year 1. It is possible a contractor will postpone the familiarization effort until it is poised to have a covered contract; however, since many contractors will have at least one new contract in Year 1, and the Department has no data on when contractors will first be affected, the Department has included all regulatory familiarization costs in Year 1. Average annualized regulatory familiarization costs over ten years, using a 7 percent discount rate, is $1.9 million.

TABLE 8—YEAR 1 COSTS

Variable	Regulatory familiarization costs	Implementation costs		
		Human resources time	Management time	Total
Hours per potentially affected contractor	0.5	N/A	N/A	
Potentially affected contractors	507,222	N/A	N/A	
Hours per employee	N/A	0.08	0.08	
Affected employees	N/A	327,310	327,310	
Loaded wage rate:	$52.65	$52.65	$86.02	
Base wage	*$32.30*	*$32.30*	*$52.77*	
Benefits and overhead adj. factor[a]	*1.63*	*1.63*	*1.63*	
Cost ($1,000s)	$13,352	$1,436	$2,346	$3,782
Average annualized cost ($1,000s):				
3% discount rate	$1,565	$168	$275	$443
7% discount rate	$1,901	$204	$334	$538

[a] Ratio of loaded wage to unloaded wage from the 2020 ECEC (46 percent) plus 17 percent for overhead.

b. Implementation Costs

The Department believes firms will incur costs associated with implementing this rule. There will be costs to adjust the pay rate in the records and tell the affected employees, among other minimal staffing changes and considerations made by managers. The Department assumed that firms would spend ten minutes on implementation costs per newly affected employee. This estimate was chosen because for most affected workers management decisions will be negligible and the time to adjust the systems is very small. However, costs for some firms may be larger, as discussed below.

Implementation time will be spread across both human resource workers who will implement the changes and managers who may need to assess whether to adjust their schedule. The Department splits the time between a Compensation, Benefits, and Job Analysis Specialist and a Manager. Compensation, Benefits, and Job Analysis Specialists earn a loaded hourly wage of $52.65 per hour.[77] Workers in Management Occupations earn a loaded hourly wage of $86.02 per hour.[78] The estimated number of newly affected employees in Year 1 is 327,300 (Table 8). Therefore, total Year 1 implementation costs were estimated to equal $3.8 million ([$52.65 × 5 minutes × 327,300 employees] + [$86.02 × 5 minutes × 327,300 employees]).

The Department believes implementation costs will generally be a function of the number of affected employees in Year 1. The Department believes there will be no implementation costs for new hires in later years because the cost to set wages would be similar for new hires under the baseline scenario and this final rule. Under Executive Order 13658, contractors were required to increase wages according to the new inflation-adjusted rates published by the Department each year. Assuming all costs are in Year 1, the average annualized implementation costs over ten years, using a 7 percent discount rate, is $538,500.

Some commenters noted that costs will be larger for firms whose workers work on both covered and non-covered work. These firms may track hours separately for covered and non-covered work and calculate weekly pay as a function of multiple wage rates. A few commenters assert that the Department's implementation cost time estimate is too low due to these time tracking requirements. The AOA asserts that the cost to track workers' time across covered and non-covered work both exceeds 10 minutes and is an ongoing cost (opposed to a one-time cost as the Department calculated). They state that it is ''absurdly unrealistic to believe that a company could pay an employee'' different rates for different work but that even if it were feasible that ''the recordkeeping alone associated with doing so would be cost-prohibitive.''

[76] This includes the median base wage of $32.30 from the May 2020 Occupational Employment and Wage Statistics (OEWS) plus benefits paid at a rate of 46 percent of the base wage, as estimated from the BLS's Employer Costs for Employee Compensation (ECEC) data, and overhead costs of 17 percent. OEWS data available at: *http://www.bls.gov/oes/current/oes131141.htm.*

[77] OEWS May 2020 reports a median base wage of $32.30 for Compensation, Benefits, and Job Analysis Specialists. The Department supplemented this base wage with benefits paid at a rate of 46 percent of the base wage, as estimated from the BLS's ECEC data, and overhead costs of 17 percent. OEWS data available at: *http://www.bls.gov/oes/current/oes131141.htm.*

[78] OEWS May 2020 reports a median base wage of $52.77 for Management Occupations. The Department supplemented this base wage with benefits paid at a rate of 46 percent of the base wage, as estimated from the BLS's ECEC data, and overhead costs of 17 percent. OEWS data available at: *https://www.bls.gov/oes/current/oes110000.htm.*

The Department agrees that some of the few firms that were previously exempt from Executive Order 13658 but will be covered by Executive Order 14026 may have to newly track employees' time across covered and non-covered work, and this extra time may exceed 10 minutes.[79] However, as noted above, the estimated implementation time of 10 minutes per newly-affected employee is the average across all affected employees, and many firms were already tracking employees' time across covered and non-covered work under Executive Order 13658 and other applicable laws, so they will not see any additional ongoing costs. The slightly higher cost is limited to a small subset of firms. Many firms' employees only work on covered tasks, and many firms already track workers' time as required by law and by contract. Therefore, the Department believes 10 minutes is still appropriate for the average firm.

Additionally, it is fairly routine for contractors subject to the SCA's and DBA's prevailing wage requirements to segregate and document employee work that is and is not covered by those laws. Workers on SCA- and DBA-covered contracts may also perform work in multiple classifications with different prevailing wage rates.[80] Therefore, the Department believes that additional recordkeeping costs for firms will be limited.

c. Other Potential Costs and Eventual Bearers of Transfers

In addition to the costs discussed above, there may be additional costs that have not been quantified. These include compliance costs, increased consumer costs, and reduced profits. The latter two hinge on the belief that employers' costs will increase by more than the associated productivity gains and cost-savings. As discussed in further detail in Section IV.C.4, employers could experience multiple benefits associated with this rule that could offset adverse impacts to prices or profits. One commenter asserted that the Department should quantify these additional costs and provide a more thorough analysis. The Department has not quantified these costs because it would require making many assumptions for which adequate data are not available. However, the Department has expanded the analysis provided earlier in the NPRM in response to comments.

i. Contract Clause Compliance Costs

This final rule requires Federal executive departments and agencies to include a contract clause in any contract covered by the Executive order. The clause describes the requirement to pay all workers performing work on or in connection with covered contracts at least the Executive order minimum wage. Contractors and their subcontractors will need to incorporate the contract clause into covered lower-tier subcontracts. The Department believes that the compliance cost of incorporating the contract clause will be negligible for contractors and subcontractors. Contractors subject to the SCA and/or DBA have long had a comparable flow-down obligation for the compliance of subcontractors by operation of the SCA and DBA. Thus, upper-tier contractors' flow-down responsibility, and lower-tier subcontractors' need to comply with prevailing wage-related legal requirements when they are incorporated into their subcontracts, are well understood concepts to SCA and DBA contractors. *See* 29 CFR 5.5(a)(6) and 4.114(b). Moreover, the flow-down provisions of Executive Order 14026 are identical to the flow-down obligations that currently exist under Executive Order 13658. The Department therefore expects that there will be very few contractors covered by Executive Order 14026 who do not have familiarity with the flow-down liability principles in this final rule.

ii. Procurement Contracts—Consumer Costs, Prices, and Profits

In general, the relevant consumer for procurement contracts is the Federal Government. If the rulemaking increases employers' costs (beyond offsetting productivity gains and cost-savings), and contractors pass along part or all of the increased cost to the government in the form of higher contract prices, then Government expenditures may rise. Alternatively, profits may shrink. However, as discussed later, benefits attributable to the Executive order are expected to accompany any such increase in expenditures, resulting in greater value to the Government. Even without accounting for increased productivity and cost-savings, direct costs to employers and transfers are relatively small compared to Federal covered contract expenditures (about 0.4 percent of contracting revenue, *see* section IV.C.5.), and thus the Department believes that any potential increase in contract prices or decrease in profits will be negligible. Impacts to profits may be larger for firms that pay lower wages, for firms with more affected workers, and for firms that cannot as readily pass increased costs onto the government or the consumer. Commenters generally did not present concerns with the Department's synopsis of consumer costs for procurement contracts.

iii. Non-Procurement Contracts—Consumer Costs, Prices, Profits, Business Closures, and Competitiveness

Non-procurement contracts on Federal lands, such as concessions contracts and permittee contracts, may experience different impacts than procurement contracts. This is predominantly because these contractors cannot as directly pass costs along to the Federal Government in the form of an increased bid amount or similar charge for the next contract. One commenter who owns Subway restaurants noted that they may have to close an establishment as a consequence of the Executive order. As discussed elsewhere in this final rule, the Department notes that there may be actions employers can take to mitigate costs, in addition to the various benefits they will observe, such as increased productivity and reduced turnover. In some instances, increased contractor costs may be passed along to the public in the form of higher prices. In limited cases, where price pass-through is limited either by government oversight of prices or by competition, this may result in reduced profits in certain instances, assuming that none of the beneficial effects or mitigating employer responses discussed in this analysis apply. Multiple commenters expressed concern about the impact of the Executive order on their prices, competitiveness, and ultimately their viability.

On average, direct costs and payroll costs (*i.e.,* transfers) are a relatively small share of total payroll (less than 0.7 percent, *see* section IV.C.5.). Even in the accommodation and food services industry, where wages tend to be lower, costs and transfers are estimated to be less than 5 percent of payroll on average. However, as discussed in response to comments below, this will vary across firms.

The literature tends to find that minimum wages result in increased prices, but that the size of that increase can vary substantially. Ashenfelter and

[79] As discussed earlier in Section II(B), Executive Order 14026 does not require employers to pay workers a different wage rate for work that is not covered by the order. Employers who respond to the Executive order by paying affected employees at least the Executive order wage rate for all work the employee performs will not have to distinguish between work that is or is not covered by the order.

[80] *See, e.g.,* 29 CFR 5.5(a)(1) (''Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; *Provided,* That the employer's payroll records accurately set forth the time spent in each classification in which work is performed'').

Jurajda (2021)[81] found that wage increases resulted in ''full or near-full price pass-through'' to the cost of a Big Mac, estimated to be about 70 percent, meaning that 70 percent of the increase in labor costs gets passed through to increased prices. Basker and Khan (2016) note that, ''[e]ven with full price pass-through, the income effect of [a] price increase is likely to be very small. The average price of a burger in 2014, according to the C2ER data used in this paper, was approximately $3.77. [Thus, for example, a] 3 [percent] increase in this price amounts to only about 10 cents.''[82] Echoing the minimal anticipated price increase, Lemos (2008) found that an increase in the minimum wage of 10 percent raises food prices by no more than 4 percent, and overall prices by no more than 0.4 percent.[83]

Several commenters expressed concern that the proposed rule would have large impacts on their prices, much larger than the average impact presented here by the Department. The Department agrees that the size of price increases will vary based on the company and industry. Companies with larger payroll costs, or more low-wage workers, would have larger impacts. However, the Department believes the size of the increase has been overstated by commenters, because increasing the minimum wage of their workers is expected to help reduce absenteeism and turnover in the workplace and improve employee morale and productivity. Additionally, increased efficiency and quality of services could attract more customers and result in increased sales. Contractors may also be able to offset wage increases by negotiating a lower percentage of sales paid as rent or royalty to the Federal government in new contracts.[84]

Price increases and impacts may be more pronounced among affected firms which are not currently covered by Executive Order 13658, including seasonal recreational businesses exempt under Executive Order 13838. Whereas most affected contractors are already required to pay $10.95 per hour (as of January 1, 2021), some firms not presently subject to Executive Order 13658 may pay lower wages, *e.g.,* the FLSA minimum wage of $7.25 per hour. However, with respect to seasonal recreational businesses presently exempt under Executive Order 13838, the Department notes that many of these entities were subject to Executive Order 13658 from 2015 through most of 2018, which required them to pay workers a minimum wage of $10.10 to $10.35 per hour before Executive Order 13838 exempted them. It is unlikely these establishments would have lowered their employees' pay substantially from these rates. This appears consistent with comments submitted by some outfitter and guide establishments that indicate they currently pay more than $7.25 per hour. Additionally, the Department believes the efficiency gains noted above are also applicable here.

In non-procurement contracts, commenters asserted these price increases could impact their customers (those individuals who purchase goods and services from private companies on Federal property), especially low-wage customers. Many also claimed this regulation undermines recent government and non-profit efforts to expand access to Federal parks and lands. For example, the AOA wrote that ''increasing costs to the public is contrary to current policy efforts to expand access to outdoor recreation opportunities, particularly among traditionally underrepresented or underserved populations.'' The National Park Hospitality Association wrote, ''NPS has recently increased its efforts to promote more diversity and inclusion in our national parks through its Office of Relevancy, Diversity and Inclusion [. . .] [This rule] will directly contradict and frustrate efforts to increase diversity and inclusion in our national parks.'' The Department believes in general that any price increase needed to cover increased payroll costs will not be large enough to deter access. As noted above, the payroll increases are generally small, and likely only a subset of those increases are passed along to consumers in the form of higher prices. For example, one commenter indicated that increasing entry level wages to $15 per hour, as well as increasing the wages of more experienced workers would increase their wage bill by $2.1 million per year. However, the commenter also stated they average 500,000 customers per year, so the Department calculated that if the commenter was to increase their price by $4.20 per customer, it would cover the increased wage costs. Additionally, the Department believes that the increased productivity and reduced turnover benefits, as well as the alternatives available through renegotiation, as discussed above, would help offset the costs.

Commenters also noted that these price increases would impact their profits, competitiveness, and viability. Although some commenters mentioned that increasing the minimum wage reduces profits, no commenters provided data or substantive information on the extent to which profits would be impacted. Additionally, the Department found little literature showing a link between minimum wages and profits. One paper by Draca et al. (2011) did find a statistically significant, but not necessarily large, negative link between minimum wages and profits in the United Kingdom.[85]

Several commenters discussed the impacts of the Executive order on competitiveness, and how this limits the potential price increases they can make. SBA Office of Advocacy wrote, ''[s]mall businesses in recreation industries on federal lands may not be able to pass on these extra wage costs to their customers because of competition from nearby recreation businesses that do not have ties to Federal land. One outfitter providing river tours noted that they had multiple competitors nearby that are not on federal land and only pay a minimum wage of $7.25 an hour.'' MAD Adventures/Grand Adventures wrote, ''[w]e have to choose to either eat the additional cost [or] pass it along to our customers. In highly competitive [industries] such as mine, it is difficult to pass along the additional cost to customers when some of competitors never operate on federal land.'' A Subway franchise operator located on military bases noted that competitors are not subject to the same wage increases. The Department believes that establishments operating on Federal property compete on characteristics other than price. Specifically, recreating on Federal lands has many advantages to non-Federal lands (such as aesthetics and remoteness). This is evidenced by the willingness of contractors, including permittees, to pay greater costs to operate on Federal lands. Therefore, these operators may be able to remain competitive even after moderate price increases. Similarly, fast-food operators

[81] Ashenfelter, O., & Jurajda, S. (2021). Wages, Minimum Wages, and Price Pass-Through: The Case of McDonald's Restaurants. IRS Working Papers, Report No. 646. *https://dataspace.princeton.edu/bitstream/88435/dsp01sb397c318/4/646.pdf.*

[82] Basker, E., & Khan, M.T. (2016). Does the Minimum Wage Bite into Fast-Food Prices? Industrial Organization: Empirical Studies of Firms & Markets eJournal. *https://dx.doi.org/10.2139/ssrn.2326659.*

[83] Lemos, S. (2008). A Survey of the Effects of the Minimum Wage on Prices. Journal of Economic Surveys, 22(1), 187–212. *https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1467-6419.2007.00532.x.*

[84] This ability to negotiate is not universal. For example, permits for ski areas, marinas, and organizational camps are subject to land use fees that are determined by federal statute or agency regulations or directives.

[85] Draca, M., Machin, S., & Van Reenen, J. (2011). Minimum Wages and Firm Profitability. American Economic Journal: Applied 3(1), 129–151. doi: 10.1257/app.3.1.129.

on military bases have a distinct advantage to off-base competitors due to location convenience.

Several commenters noted that their prices are either regulated by the government or must be approved by the government, making it harder to pass costs along to consumers in the form of higher prices. Consequently, the impact on profits and business closures may be more pronounced for these firms. The Department notes that in many cases, these firms may be able negotiate a lower percentage of sales paid as rent or royalty to the Federal government in new contracts.[86] Additionally, although requiring approval to increase prices may be an additional hurdle for some, it does not prevent price increases. Prospective increases in contract amounts due to higher labor costs for companies with procurement contracts also need to be tacitly ''approved'' by the government agency awarding the new contract. While the Department does acknowledge that price restrictions will be detrimental to some firms' ability to adapt, as noted earlier, the increase in cost is expected to generally be small. The increased productivity associated with increased wages may also lead to increased sales and business, potentially offsetting any costs.

iv. Other Costs Noted by Commenters

A variety of other costs were noted by commenters. Rocky Mountain Adventures and the National Ski Area Association argued that this rule will generate wage compression by raising the wages of the lowest paid workers and potentially restricting firms' ability to give raises to more experienced workers, or by restricting hiring. Additionally, as other commenters pointed out, raising the minimum wage for lower-paid workers could also lead to spillover effects in the form of wage increases for higher-paid workers. *See* Section IV.C.3.c for a discussion of these effects. Additionally, higher entry-level wages will attract more workers to the field, and may with time result in more experienced personnel.

An anonymous commenter noted specific concerns for the private construction industry in U.S. territories. They assert that by paying more on Federal contracts, it will increase prices for private construction, make it harder to find labor, and drive out private construction. The Department disagrees with the magnitude of these assertions. This rule may result in the most-skilled workers favoring Federal construction jobs, but the total supply of labor in the territories will not decrease. In fact, with an upward sloping labor supply curve, higher wages should entice additional workers into the labor market. Workers who cannot obtain work on the higher-paying Federal contracts would continue to work at the current market wage rates.

One commenter, the Colorado River Outfitters Association, noted that permittees pay the Federal government fees based on prices. Therefore, price increases will result in higher fees. The Department notes that the size of this increase is likely to be small because price increases are likely to be small and fees are a small percentage of the price increase.

3. Transfer Payments

The Department estimated transfer payments to workers in the form of higher wages. Directly, these are transfers from employers to the employees; however, ultimately these transfer costs to firms may be offset by higher productivity, cost-savings, or cost pass-throughs to the government and consumers. The Department believes negative impacts on employment or fringe benefits will be small to negligible (sections IV.C.3.d. and IV.C.3.e.). Additionally, some workers currently earning at least $15 per hour, or working on non-covered contracts, may also receive pay raises due to spill-over effects (this is also discussed qualitatively in section IV.C.3.c.).

Many papers have found increased earnings for low-wage workers associated with a minimum wage increase. The Congressional Budget Office's (CBO's) 2019 paper provides an overview of this literature.[87] Based on this research, economists have continually found that increasing the minimum wage can, under certain conditions, increase earnings and alleviate poverty. The CBO (2019) estimates a national $15 per hour minimum wage, implemented by 2025, could raise earnings for 27 million workers, 17 million of whom would have their rate increased to the new minimum wage and ten million of whom may receive spillover effects.

a. Calculating Transfer Payments, Year 1

To estimate transfers, the Department used the population of affected workers estimated in section IV.B.4 and the 2019 CPS data. Hourly transfers (excluding overtime pay) are estimated on an industry basis as the difference between $15 per hour and the average current hourly wage of workers with wages in the affected wage rate range.[88] [89] *See* Table 9 for the average hourly wage used for each industry. Hourly transfers are then multiplied by average weekly hours in the industry and 52 weeks. Using wage data by industry results in Year 1 base pay transfer payments of $1.5 billion in 2020 dollars (Table 9). 2019 transfers were inflated to 2020 dollars using the GDP deflator.[90]

In the NPRM, the Department did not estimate transfers associated with overtime pay. However, in response to commenter feedback from entities such as the AOA and SBA's Office of Advocacy, the Department has incorporated estimates of increased overtime payments into the final rule's transfer estimate. To calculate increased overtime payments, the Department used hours and wages for the subset of affected workers who work overtime. Annual overtime transfers are then calculated, by industry, as the product of the number of affected overtime workers, the average wage rate, the average number of weekly overtime hours, the overtime premium of 0.5 times the hourly rate, and 52 weeks. After inflating to 2020 dollars, this results in annual overtime pay transfers of $244.9 million and annual total transfers of $1.7 billion.

There are several reasons Year 1 transfers may be over- or underestimated, but the Department believes the net effect is an overestimate. First, as noted in section IV.B.3., the Department assumed all workers would be affected in Year 1, whereas in reality some will not receive transfers until later years. Second, some workers will not be impacted until partway through 2022. For example, many contracts may not be impacted until the beginning of the fiscal year on October 1, 2022. Therefore, annualizing

[86] If a reduction in profits results in fewer vendors competing to lease a property, the agency owning the property may have to lower its rent or risk no one wanting to lease their property.

[87] CBO. (2019, July). The Effects on Employment and Family Income of Increasing the Federal Minimum Wage (Publication No. 55410). *https://www.cbo.gov/publication/55410.*

[88] The Department notes that the minimum wage will be $15 in 2022, and thus could be deflated to be the comparable amount in 2019. However, because the appropriate measure to use to deflate this wage is ambiguous; the Department used $15, which may overestimate the number of affected workers.

[89] For covered tipped workers, the $15 minimum wage will be phased-in through 2024. However, the Department uses the full $15 in Year 1. Calculating transfers based on a rate of $15 in 2022 will overestimate the transfers for tipped workers in Year 1. However, the Department believes there are few tipped workers covered by Federal contracts, so the overestimate is likely small relative to total transfers.

[90] Bureau of Economic Analysis. (2021). Table 1.1.9. Implicit Price Deflators for Gross Domestic Product. *https://www.bea.gov/data/prices-inflation/gdp-price-deflator.*

Year 1 transfers for a full 52 weeks should result in an overestimate. Third, the Department assumed the number of overtime hours worked would remain the same, whereas increased overtime payments could result in some employers attempting to offset or minimize overtime costs by reducing employees' overtime hours. Conversely, transfers may be underestimated because the Department did not account for higher wages paid on non-Federal work or to workers already earning at least $15 (section IV.C.3.c.).

Some commenters believe the transfer payments are underestimated. For example, SBA Office of Advocacy noted an apparent disconnect between the size of the per-firm transfer estimate and the approximately 37 percent increase in the minimum wage. However, as shown in Table 5, only a minority of employees will receive wage increases and of those, some employees are earning above the Executive Order 13658 minimum wage, thus the average increase in pay is much less than 37 percent (Table 9). Other commenters noted that the Department excluded spillover costs to workers already earning $15 per hour or working on non-covered contracts. These comments are addressed in section IV.C.3.c. Associated Builders and Contractors believe the transfer payment is underestimated due to data limitations for U.S. territories. The Department used the best available data on wage distributions for the territories which only existed for Puerto Rico, Guam, and the U.S. Virgin Islands. The remaining territories are such a small share of Federal government contracting that any bias introduced due to data limitations is likely to be small.

TABLE 9—BASE PAY TRANSFER PAYMENT CALCULATION, YEAR 1

NAICS	Affected employees (1,000s)	Mean base wage [a]	Hourly wage increase	Average weekly hours	Transfers (millions)	Transfers in 2020$ (millions) [b]
11	0.5	$12.53	$2.47	42	$2.8	$2.9
21	0.0	13.16	1.84	47	0.1	0.1
22	0.4	12.98	2.02	44	2.0	2.0
23	30.0	12.85	2.15	39	131.0	132.6
31–33	10.3	12.88	2.12	40	45.0	45.5
42	0.1	12.72	2.28	40	0.4	0.4
44–45	15.2	12.49	2.51	34	66.7	67.5
48–49	42.3	12.84	2.16	39	187.1	189.3
51	4.9	12.74	2.26	37	21.0	21.3
52	2.4	12.90	2.10	39	10.2	10.4
53	0.1	12.87	2.13	37	0.5	0.5
54	48.1	12.94	2.06	38	193.6	196.0
55	0.0	12.35	2.65	37	0.0	0.0
56	104.5	12.67	2.33	37	473.9	479.7
61	6.1	12.69	2.31	33	23.9	24.2
62	18.8	12.74	2.26	36	79.6	80.6
71	5.6	12.49	2.51	31	23.1	23.3
72	25.1	11.88	3.12	32	131.1	132.7
81	5.5	12.59	2.41	34	23.6	23.9
Territories [c]	7.2	12.57	2.43	36	32.5	32.9
Total	327.3	N/A	N/A	N/A	1,448.1	1,465.7

[a] CPS MORG 2019. Mean wage for workers earning between $10.60 ($7.40 for tipped workers) and $15 per hour.
[b] Inflated to 2020$ using GDP Deflator.
[c] Mean wage and hours among workers earning at least between $10.60 ($7.40 for tipped workers) and $15 per hour is unavailable for territories; therefore, the Department used 2019 CPS MORG data from the fifty states and Washington, DC.

TABLE 10—OVERTIME PAY TRANSFER PAYMENT CALCULATION AND TOTAL TRANSFERS, YEAR 1

NAICS	Affected employees working overtime			Annual overtime transfers		Total transfers (base and overtime) in 2020$ (millions)
	Number (1,000s)	Average overtime hours	Average wage [a]	In 2019 (millions)	In 2020$ (millions) [b]	
11	0.2	14.0	$12.46	$0.8	$0.8	$3.7
21	0.0	20.0	13.28	0.0	0.1	0.1
22	0.1	18.8	12.81	0.7	0.7	2.8
23	5.6	11.3	13.08	21.7	21.9	154.5
31–33	2.2	10.2	13.04	7.5	7.6	53.1
42	0.0	11.6	13.01	0.1	0.1	0.5
44–45	1.8	11.1	12.79	6.6	6.7	74.2
48–49	9.9	15.4	13.03	51.4	52.0	241.4
51	0.9	11.7	12.79	3.5	3.6	24.9
52	0.4	10.4	13.05	1.3	1.3	11.7
53	0.0	14.5	13.03	0.1	0.1	0.6
54	10.0	13.5	13.12	46.3	46.9	242.9
55	0.0	12.6	12.33	0.0	0.0	0.0
56	16.5	11.4	12.84	62.9	63.7	543.4
61	0.8	14.2	12.94	4.0	4.0	28.2
62	2.7	14.9	12.88	13.5	13.7	94.3
71	0.6	11.2	12.71	2.3	2.3	25.7
72	2.9	11.7	12.30	11.0	11.2	143.9
81	0.8	12.3	12.80	3.3	3.4	27.2

TABLE 10—OVERTIME PAY TRANSFER PAYMENT CALCULATION AND TOTAL TRANSFERS, YEAR 1—Continued

NAICS	Affected employees working overtime			Annual overtime transfers		Total transfers (base and overtime) in 2020$ (millions)
	Number (1,000s)	Average overtime hours	Average wage [a]	In 2019 (millions)	In 2020$ (millions) [b]	
Territories [c]	1.1	12.4	12.84	4.7	4.8	37.7
Total	56.7	N/A	N/A	242.0	244.9	1,710.6

[a] CPS MORG 2019. Mean wage for workers earning between $10.60 ($7.40 for tipped workers) and $15 per hour.
[b] Inflated to 2020$ using GDP Deflator.
[c] Mean wage and hours among workers earning at least $10.60 unavailable for territories; therefore, used the 2019 CPS MORG data from the fifty states and Washington, DC.

As discussed in section IV.B.4., the number of affected workers may exclude some seasonal recreation workers currently exempt under Executive Order 13838 (approximately 1,200 employees, consistent with the Department's estimate when it initially implemented Executive Order 13838). Excluding these workers may result in a slight underestimate of transfers. However, some of these currently exempt workers, those earning between $10.60 and $15 per hour, are captured in the analysis. And for these workers, transfers may be somewhat overestimated because we have applied weekly transfers to all 52 weeks. As seasonal employees, the applicable number of work weeks may be lower.

Commenters asserted that the transfer estimates are not appropriate for outfitters and guides on Federal lands, particularly due to the long hours that some workers of such entities may work on overnight or multi-day trips. For example, SBA Office of Advocacy, wrote, ''[w]hile some employers can manage costs by limiting employees to 40 hours per week, it would not be feasible to switch out these recreational workers after 40 hours as they would be in the middle of remote trips in these parks.'' The Department has partially addressed these concerns by incorporating overtime pay into the transfer calculation. This reflects the impact of overtime for the arts, entertainment, and recreation industry as a whole. However, the Department does acknowledge that those working on multi-day trips in remote areas do pose a unique situation, and hence the Department discusses commenters' concerns specific to this industry in more detail here.

First, the Department notes that some of these employers may be able to use a partial overtime pay exemption under FLSA section 13(b)(29).[91] This exemption provides, under specific circumstances involving employees of a private ''amusement or recreational establishment located in a national park or national forest or on land in the National Wildlife Refuge System'' operating under a contract with the Secretary of the Interior or the Secretary of Agriculture to provide services or facilities on such land, that overtime pay only needs to be paid for time worked in excess of 56 hours in a week. Employers that meet the criteria for this exemption would see a reduction in the amount of overtime pay required. Second, employers may be able to exclude from compensable hours worked bona fide sleep time and other periods when the employee is free from duty where they meet the requirements for doing so under the FLSA. *See* 29 CFR part 785 (providing guidance for determining compensable hours worked). Third, overtime is calculated based on a workweek basis and so for short trips, employers may be able to generally avoid or minimize overtime costs by reducing employee worktime elsewhere in the workweek. Similarly, employers may schedule longer trips to spread across two separate workweeks. *See* 29 CFR 778.105 (providing guidance for determining the workweek).

b. Transfer Payment Projections

For longer-run projected transfers, the Department employed the same method used for Year 1 but used the projected number of employees. The Department applied an employment growth rate that is the compounded annual growth rate based on the ten-year projected growth. The Department assumed that wage growth will be similar to growth in the Federal contractor minimum wage (which is indexed annually based on the CPI–W).[92] Therefore, the number of affected workers in Year 1 would also apply in future years. Due to employment growth, transfers increase slightly each year, reaching $1.81 billion in Year 10 (up from $1.71 billion in Year 1). Average annualized transfers over these ten years, using both the 3 percent and 7 percent discount rates, are $1.8 billion. Year 1 transfers implicitly account for current state minimum wages through the distribution of wage rates paid.[93] If states increase their minimum wages in the future, and the current method is applied to those future years, then estimated transfers might be somewhat lower.

This rule would also increase payroll taxes and workers' compensation insurance premiums in addition to the increase in wage payments because these are calculated as a percentage of the wage payment. The Department recognizes that it will be incumbent upon contractors to pay the applicable percentage increase in payroll and unemployment taxes.

c. Spillover Effects

Employees earning above $15 per hour, at affected firms, may also see wage increases. Employers often increase earnings of workers earning above the minimum wage to prevent wage compression. Consider a scenario where a supervisor makes $15 per hour and now the workers that the supervisor supervises receive pay increases to $15 per hour. The supervisor will likely receive a pay increase to maintain a

[91] Section 13(b)(29) exempts ''any employee of an amusement or recreational establishment located in a national park or national forest or on land in the National Wildlife Refuge System if such employee (A) is an employee of a private entity engaged in providing services or facilities in a national park or national forest, or on land in the National Wildlife Refuge System, under a contract with the Secretary of the Interior or the Secretary of Agriculture, and (B) receives compensation for employment in excess of fifty-six hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed.''

[92] Wage growth tends to outpace the CPI–W. However, the Department assumes current wages (in the absence of this minimum wage regulation) and the Federal contractor minimum wage in this regulation will grow at roughly the same rate. If workers' wages grow faster than the CPI–W, then transfers could be slightly overestimated.

[93] In using the CPS MORG data to estimate the percentage of workers earning a wage rate in the affected range, the Department did not drop workers reporting wages that were less than the state minimum wage. However, state minimum wages are reflected in the Department's estimate of workers earning wage rates in the affected range because workers in those states generally report earning at least the state minimum wage.

premium over the workers reporting to them. Ashenfelter and Juraida (2012) find evidence of this spillover effect as a method to retain workers in limited-function restaurants.[94] Cengiz et al. (2019) also found modest spillover effects up to $3 over the new minimum wage, even at higher levels of minimum wages.[95] Nguyen (2018) estimates that by increasing the Federal minimum wage from $7.25 to $10.10 ''up to a third of the work force other than minimum wage earners would also see their earnings increase, such as supervisors who had earned $10.10 and now would see an increase in salary.'' [96] Dube and Lindner (2021) find spillover effects up to about the 30th percentile of the wage distributions.[97]

A similar type of spillover effect may also occur for workers on non-covered contracts. For example, if two employees perform similar work, but one is on a Federal contract and the other is not, the employer may raise both workers' wages for fairness. Similarly, if an employee works on both covered and non-covered contracts, the employer may increase the employee's wage for all hours, rather than bifurcating by contract.

Several commenters discussed potential spillover effects and some requested the Department quantify these transfer payments. The Department agrees that there will likely be wage increases for some workers earning above $15 per hour or working on non-covered contracts. However, the Department has not quantified this change for several reasons. First, there is uncertainty as to how many workers would receive wage increases and by how much. Second, although contractors may voluntarily raise the wages of such workers to avoid wage compression or maintain fairness, doing so is not a requirement of compliance with Executive Order 14026 or the rule. Additionally, inclusion of potential spillover effects is unlikely to drastically change the Department's findings. EPI conducted an analysis similar to the Department's analysis but with the inclusion of spillover costs for workers earning up to $17.25 per hour. They estimated 390,000 workers would receive pay raises, compared with the Department's estimate of 327,000. EPI also estimated annual transfers of $1.2 billion per year, which is actually lower than the Department's estimate of $1.7 billion (likely due to other methodological differences).

d. Disemployment

The Department reviewed evidence relevant to this final rule's potential to have disemployment effects. Disemployment of low-wage workers occurs when employers substitute capital or fewer more productive higher-wage workers to perform work previously performed by larger numbers of low-wage workers. Economists have studied the size of this potential disemployment effect of increased minimum wages for decades. The consensus among a substantial body of research is that disemployment effects can be small or non-existent.[98] Therefore, the Department believes this final rule would result in negligible or no disemployment effects.

Manning (2020) found no significant impact of increased minimum wages on employment through comprehensive literature reviews.[99] Wolfson and Belman's (2019) conclusion as a result of a meta-analysis of 37 studies found a small disemployment effect, but the effect has decreased over time.[100] Some authors even found positive effects on employment as a result of minimum wage increases (Ahn, Arcidiacono and Wessels, 2011).[101]

Ashenfelter and Jurajda (2021) found that increased minimum wages does not inherently facilitate automation in low-wage, low skill jobs, though this research only studied limited-service restaurants.[102] Lordan and Neumark (2018) [103] found that low-skilled workers were more likely to lose their jobs to automation because of minimum wage increases, and workers are able and likely to shift sectors to retail or service as a result. Meanwhile, higher-skilled workers saw increased job opportunities with minimum wage increases. Two studies by Jardim et al. (2018) find mixed employment effects from Seattle's Minimum Wage Ordinance that increased the minimum wage from $9.47 to $11 in 2015 and to $13 in 2016.[104]

The employment effects of a $15 minimum wage can be quite different depending on whether current wages are already close to $15 or substantially lower. A CBO study estimates a disemployment effect of 0.9 percent, but the elasticity underlying that result is quite high (−0.25).[105] Allegretto, Godoey, Nadler, & Reich (2018), for example, estimate elasticities of between −0.03 and −0.11 (not statistically significant), based on minimum wages of $10 to $13 in six large cities between 2014 and 2016.[106]

EPI agreed with the Department's conclusion that this rule would result in negligible or no disemployment. They also cited Dube (2019) as evidence that minimum wage increases generally do not result in disemployment. Additionally, they note that ''a federal contracting wage standard is unlike the minimum wage increases studied in that literature: Most of the resulting labor cost increases due to a federal contracting standard are funded by government transfers. Therefore there is little incentive for employers to substitute away from low-wage workers in response to the proposed rule.''

Conversely, several commenters disagreed with the Department's conclusion that disemployment will be negligible. Representatives Virginia Foxx and Fred Keller cite four sources to demonstrate the potential for negative employment effects. Two of these are surveys asking speculatively about the impacts of a $15 national minimum wage. A 2021 survey conducted by the National Federation of Independent Business found that 74 percent of small businesses said a phased-in $15 minimum wage would negatively impact their business and 58 percent

[94] Ashenfelter, O., & Jurajda, S. (2021). Wages, Minimum Wages, and Price Pass-Through: The Case of McDonald's Restaurants. IRS Working Papers, Report No. 646. *https://dataspace.princeton.edu/bitstream/88435/dsp01sb397c318/4/646.pdf.*

[95] Cengiz, D., Dube, A., Lindner, A., & Zipperer, B. (2019). The Effect of Minimum Wages on Low-Wage Jobs. The Quarterly Journal of Economics, 134(3), 1405–1454. doi:10.1093/qje/qjz014.

[96] Nguyen, LC. (2018). The Minimum Wage Increase: Will This Social Innovation Backfire? Social Work, 63(4), 367–369. doi: 10.1093/sw/swy040.

[97] Dube, A., & Lindner, A. (2021). City Limits: What Do Local-Area Minimum Wage Do? Journal of Economic Perspectives, 35(1), 27–50. doi:10.1257/jep.35.1.27.

[98] Dube, A. (2019). Impacts of Minimum Wages: Review of the International Evidence. *https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/844350/impacts_of_minimum_wages_review_of_the_international_evidence_Arindrajit_Dube_web.pdf.*

[99] Manning, A. (2020). The Elusive Employment Effect of the Minimum Wage. Journal of Economic Perspectives, 35(1), 1–26. doi:10.1257/jep.35.1.3.

[100] Wolfson, P., & Belman, D. (2019). 15 Years of Research on U.S. Employment and the Minimum Wage. Labour Review of Labour Economics and Industrial Relations 33(4), 488–506. *https://doi.org/10.1111/labr.12162.*

[101] Ahn, T., Arcidiacono, P., & Wessels, W. (2011). The Distributional Impacts of Minimum Wage Increases When Both Labor Supply and Labor Demand Are Endogenous. Journal of Business & Economic Statistics 29(1), 12–23. *https://econpapers.repec.org/article/besjnlbes/v_3a29_3ai_3a1_3ay_3a2011_3ap_3a12-23.htm.*

[102] Ashenfelter, O., & Jurajda, S. (2021). Wages, Minimum Wages, and Price Pass-Through: The Case of McDonald's Restaurants. IRS Working Papers, Report No. 646. *https://dataspace.princeton.edu/bitstream/88435/dsp01sb397c318/4/646.pdf.*

[103] Lordan, G., & Neumark, D. (2018). People Versus Machine: The Impact of Minimum Wages on Automatable Jobs. Labour Economics 52(3), 40–53. *https://doi.org/10.1016/j.labeco.2018.03.006.*

[105] Congressional Budget Office (CBO), The Budgetary Effects of the Raise the Wage Act of 2021, (Feb. 2021), *https://www.cbo.gov/system/files/2021-02/56975-Minimum-Wage.pdf.*

responded that they would reduce the number of employees working for them. A 2019 survey conducted by the Employment Policies Institute of 197 U.S. economists found 84 percent believe a $15 Federal minimum wage would have negative effects on youth employment and that 77 percent believe it would have a negative impact on jobs available. The Department places greater weight on literature evaluating impacts of past minimum wage increases, or literature modeling impacts of future increases, than survey responses that are not necessarily representative or substantiated.

Representatives Foxx and Keller also cite a 2021 working paper by David Neumark and Peter Shirley that reviewed 30 years of literature on the impacts of a minimum wage increase. The commenters note that 79 percent of the studies showed that an increase in the minimum wage leads to a decrease in the level of employment. However, only 54 percent of the cited studies found a statistically significant negative impact at a 10 percent significance threshold; not statistically significant impacts cannot be distinguished from zero impact. Additionally, the median elasticity from the literature is −0.112. This implies that for a 1 percentage point increase in wages, employment would fall by 0.112 percent. An elasticity of this magnitude is generally considered small. Finally, many of the studies in this review are not applicable to this specific rule.

Lastly, Representatives Foxx and Keller cite the Congressional Budget Office's (CBO's) 2021 report studying the impacts of a $15 Federal minimum wage. CBO estimates that a Federal minimum wage increase to $15 would result in 1.4 million job losses. Representatives Foxx and Keller assert that ''[s]imilar results would be expected among federal contractors if this $15 minimum wage is enacted.'' The Department disagrees that similar results are applicable for Federal contractors. Because many federal contractors can pass most of the cost increase on to the Federal Government, the disemployment effects are likely to be much smaller. Additionally, workers on federal contract are already often paid at a rate higher than the Federal minimum wage of $7.25; in fact, many workers are currently subject to a $10.95 per hour minimum wage, so the increase in wages will be much smaller. The Department does note that employment effects among companies operating on Federal lands under nonprocurement contracts, who might be more limited in their ability to pass costs along to the Federal government, may have impacts more in line with the CBO's analysis. However, CBO's primary estimate is fairly small, a reduction of 0.9 percent employment from increasing the minimum wage from $7.25 per hour to $15 per hour (a 107 percent increase). Additionally, CBO uses a larger elasticity than the Department believes is appropriate based on a review of the literature discussed earlier.

Based on the summary above, even after evaluating this additional literature highlighted by some commenters, the Department continues to believe disemployment effects will be small.

e. Reduction in Benefits or Bonuses

Increased wage rates could potentially be offset by reductions in fringe benefits, bonuses, or training. The Department believes these impacts will be small. First, service employees on SCA-covered contracts generally are entitled to be paid pre-determined fringe benefit amounts. Second, the increased costs to employers are very small as a share of contracting revenues (about 0.4 percent, *see* section IV.C.5.).

The National Park Hospitality Association noted that many concessionaires on Federal lands provide additional benefits, such as room and board. They assert that this rule may result in employees being charged for those benefits. The Department recognizes and understands that some concessionaire contractors on federal lands provide benefits, such as room and board, to their employees. FLSA section 3(m) permits an employer, under conditions specified in 29 CFR part 531, to count toward its minimum wage obligation the reasonable cost of furnishing board, lodging, or other facilities that are customarily furnished to employees. Therefore, an employer/contractor who meets the specified conditions may take a credit against the minimum wage for the provision of board, lodging, and other facilities.[107]

4. Benefits

The Department did not quantify benefits of this rulemaking due to uncertainty and data limitations. However, the Department discusses many benefits qualitatively as indicators of the efficiency and economy gained in government procurement. These include improved government services, increased morale and productivity, reduced turnover, reduced absenteeism, increased equity, and reduced poverty and income inequality for Federal contract workers. The Department notes that the literature cited in this section does not directly consider a change in the minimum wage equivalent to this final rulemaking (*e.g.,* for non-tipped workers from $10.60 to $15). Additionally, much of the literature is based on voluntary changes made by firms. However, the Department believes the general findings are still applicable although the impacts are likely smaller than those measured in these studies.

Several commenters supported the Department's analysis of potential benefits. Conversely, the AOA expressed concern that the Department did not quantify these benefits but yet asserts that they will offset employer costs. The Department agrees that ideally these would be quantified, but lacks the data to do so. Therefore, the Department has continued to rely on general findings from the literature to draw its conclusions. The AOA also noted that the findings presented here may not apply to the outfitters and guides industry. The Department believes that benefits such as increased morale and productivity and decreased turnover findings tend to be general rather than industry-specific, and there is no evidence to suggest that these benefits would not apply to the outfitters and guide industry as well.

a. Improved Government Services

The Department expects the quality of government services to improve when the minimum wage of Federal contract workers is raised. In some cases, higher-paying contractors may be able to attract higher quality workers who are able to provide higher quality services, thereby improving the experience of citizens who engage with these government contractors. For example, a study by Reich, Hall, and Jacobs (2003) found that increased wages paid to workers at the San Francisco airport increased productivity and shortened airport lines.[108] In addition, higher wages can be associated with a higher number of bidders for Government contracts, which can be expected to generate greater competition and an improved pool of contractors. Multiple studies have shown that the bidding for municipal contracts remained competitive or even improved when living wage ordinances were

[107] When the criteria are met, the reasonable cost or fair market value of board, lodging, or other facilities may be considered compensation to the employee, regardless of whether the employer calculates charges for such facilities as additions to or deductions from wages. 29 CFR 531.29.

[108] Reich, M., P. Hall, and K. Jacobs. (2003). ''Living Wages and Economic Performance: The San Francisco Airport Model,'' Institute of Industrial Relations, University of California, Berkeley.

implemented (Thompson and Chapman, 2006).[109]

Various commenters agreed that raising the minimum wage for Federal contract workers would improve government services. EPI agreed ''that the quality of federal contract work will improve with a higher minimum wage. Ruffini (2021) provides direct evidence that minimum wage increases at nursing homes improved worker performance and production efficiency. In that study, inspection violations, preventable health conditions, and resident mortality all fell in response to minimum wage increases.'' NELP said, ''Employment practices that create a high morale, highly motivated, long-tenured, and productive workforce are imperative for federal agencies to realize a good return on the public dollars they allocate to contracts. Decent wages are one of those practices.'' [110] NWLC also noted that implementing these wage standards also helps level the playing field and encourages more companies to bid for contracts. They cite a study showing that, ''[A]fter Maryland implemented a contractor living wage standard, the average number of bids for contracts in the state increased by 27 percent.'' [111]

b. Increased Morale and Productivity

Increased productivity could occur through numerous channels, such as employee retention and level of effort. A strand of economic research, commonly referred to as ''efficiency wage'' theory, considers how an increase in compensation may be met with greater productivity.[112] Efficiency wages may elicit greater effort on the part of workers, making them more effective on the job.[113] Increases in the minimum wage have also been shown to increase worker morale and consequently productivity. Kim and Jang (2019) showed that wage raises increase productivity for up to two years after the wage increase.[114] They found that in both full and limited-service restaurants productivity increased due to improved worker morale after a wage increase. Potentially, higher morale leading to increased productivity can also lead to additional productivity gains. Mas and Moretti (2009) found that the presence of high-productivity grocery store cashiers was an implicit social pressure that encouraged low-productivity grocery store cashiers to perform better, especially those nearest and within line of sight of the high productivity employee.[115] Taken together, these publications provide evidence that increasing the minimum wage increases morale and productivity directly. Furthermore, as morale directly increases productivity for some workers, this may lead to increased productivity in others. The Department believes that this final rule could increase productivity for the Federal contracting community as well.

Multiple commenters agreed that increasing the minimum wage for Federal contract workers would increase productivity. NWLC said that raising the contractor minimum wage could lead to a more productive workforce, citing a review of literature showing that higher wages motivate employees to work harder.[116] NELP cited multiple studies finding that as minimum wage increases, employers see a rise in productivity. For example, they note that, ''A 2020 analysis of the effects of higher pay at a Fortune 500 company found that a 1 percent wage increase reduced turnover by 3.0 to 4.5 percent, increased staff recruitment by 3.2 to 4.2 percent, and increased productivity by $1.10.'' [117] The Department has no reason to believe that the trends found in the literature do not also apply to the Federal contract worker community, and expects this rule to result in increased productivity for these workers.[118]

c. Reduced Turnover

An increase in the minimum wage has been shown to decrease both turnover rates and the rate of worker separation (Dube, Lester and Reich, 2011; Liu, Hyclak and Regmi, 2015; Jardim et al., 2018).[119] This decrease in turnover and worker separation can lead to an increase in the profits of firms, as the hiring process can be both expensive and time consuming. A review of 27 case studies found that the median cost of replacing an employee was 21 percent of the employee's annual salary.[120] One manager of a fast-food restaurant (Hirsch, Kaufman and Zelenska, 2011) [121] when interviewed, estimated that each turnover cost $300–$400. Fairris et al. (2005) [122] found the cost reduction due to lower turnover rates ranges from $137 to $638 for each worker. Managers of various traditionally low-wage firms explained that in nearly all instances, increased wages led to both a decrease in turnover and an increase in profits. Howes (2005) discovered that as San Francisco increased the city-wide minimum wage to $10 between 1997 and 2001 ($4.85 above the then Federal minimum of $5.15) the turnover rate fell 31 percent for all healthcare providers and 57 percent for new healthcare providers.[123]

Although the impacts cited here are not limited to Federal contracting,

[109] Thompson, J. and J. Chapman. (2006). ''The Economic Impact of Local Living Wages,'' Economic Policy Institute, Briefing Paper #170, 2006.

[110] Paul Sonn and Tsedeye Gebreselassie, ''The Road to Responsible Contracting: Lessons from States and Cities for Ensuring the Federal Contracting Delivers Good Jobs and Quality Services'' (New York, N.Y.: National Employment Law Project, 2009).

[111] Michael C. Rubenstein, Impact of the Maryland Living Wage, MARYLAND DEP'T OF LEG. SERVICES 10 (2008), *http://dlslibrary.state.md.us/publications/OPA/I/IMLW_2008.pdf.*

[112] Akerlof, G.A. (1982). Labor Contracts as Partial Gift Exchange. *The Quarterly Journal of Economics,* 97(4), 543–569.

[113] Another model of efficiency wages, which is less applicable here, is the adverse selection model in which higher wages raise the quality of the pool of applicants.

[114] Kim, H.S., & Jang, S. (2019). Minimum Wage Increase and Firm Productivity: Evidence from the Restaurant Industry. Tourism Management 71, 378–388. *https://doi.org/10.1016/j.tourman.2018.10.029.*

[115] Mas, A., & Moretti, E. (2009). Peers at Work. American Economic Review 99(1), 112–45. *https://www.aeaweb.org/articles?id=10.1257/aer.99.1.112.*

[116] Justin Wolfers & Jan Zilinsky, Higher Wages for Low-Income Workers Lead to Higher Productivity, PETERSON INST. FOR INT'L ECON. (Jan. 13, 2015), *https://piie.com/blogs/realtime-economic-issues-watch/higher-wages-low-income-workers-lead-higher-productivity.*

[117] Natalia Emanuel and Emma Harrington, ''The Payoffs of Higher Pay: Elasticities of Productivity and Labor Supply with Respect to Wages,'' Harvard University Publications, 2020.

[118] The Department acknowledges that the literature discussed here examines changes to productivity following employers' voluntary increases to employees' wages. The mandated wage increase in this rule may not generate as many positive feelings towards the employer as a voluntary wage increase would, but it still has the potential to generate productivity benefits related to efficiency wages.

[119] Dube, A., Lester, T.W., & Reich, M. (2011). *Do Frictions Matter in the Labor Market? Accessions, Separations, and Minimum Wage Effects. (Discussion Paper No. 5811).* IZA. *https://www.iza.org/publications/dp/5811/do-frictions-matter-in-the-labor-market-accessions-separations-and-minimum-wage-effects.* Liu, S., Hyclak, T.J., & Regmi, K. (2015). Impact of the Minimum Wage on Youth Labor Markets. *Labour 29*(4). doi: 10.1111/labr.12071. Jardim, E., Long, M.C., Plotnick, R., van Inwegen, E., Vigdor, J., & Wething, H. (2018, October). *Minimum Wage Increases and Individual Employment Trajectories* (Working paper No. 25182). NBER. doi:10.3386/w25182.

[120] Boushey, H. and Glynn, S. (2012). There are Significant Business Costs to Replacing Employees. Center for American Progress. Available at: *http://www.americanprogress.org/wp-content/uploads/2012/11/CostofTurnover.pdf.*

[121] Hirsch, B.T., Kaufman, B.E., & Zelenska, T. (2011). *Minimum Wage Channels of Adjustment. (Discussion Paper No. 6132).* IZA. *https://www.iza.org/publications/dp/6132/minimum-wage-channels-of-adjustment.*

[122] Fairris, D., Runstein, D., Briones, C., & Goodheart, J. (2005). *Examining the Evidence: The Impact of the Los Angeles Living Wage Ordinance on Workers and Businesses.* LAANE. *https://laane.org/downloads/Examinig_the_Evidence.pdf.*

[123] Howes, C. (2005). Living Wages and Retention of Homecare Workers in San Francisco. *Industrial Relations 44*(1), 139–163. *https://onlinelibrary.wiley.com/doi/abs/10.1111/j.0019-8676.2004.00376.x.*

because data specific to Federal contracting and turnover are not available, the Department believes that a reduction in turnover could be observed among workers on Federal contracts following this final rule. The potential reduction in turnover is a function of several variables: The current wage, hours worked, turnover rate, industry, and occupation. Therefore, the Department has not quantified the impacts of potential reduction in turnover for Federal contracts.

A handful of commenters discussed impacts to turnover rates, and some cited the literature discussed above. AFL–CIO, EPI, Maximus, NWLC, One Fair Wage, Workplace Fairness, and others agreed that minimum wage increases tend to lead to reductions in turnover, which may result in sizable cost-savings to firms.

d. Reduced Absenteeism

Studies on absenteeism have demonstrated that there is a negative effect on firm productivity as absentee rates increase.[124] Zhang et al., in their study of linked employer-employee data in Canada, found that a 1 percent decline in the attendance rate reduces productivity by 0.44 percent.[125] Allen (1983) similarly noted that a 10-percentage point increase in the absenteeism corresponds to a decrease of 1.6 percent in productivity.[126] Increasing wages can result in decreased absenteeism. Fairris et al. (2005) demonstrated that as a worker's wage increases there is a reduction in unscheduled absenteeism.[127] They attribute this to workers standing to lose more if forced to look for new employment and an increase in pay paralleling an increase in access to paid time off. Pfeifer's (2010) study of German companies provides similar results, indicating a reduction in absenteeism if workers experience an overall increase in pay.[128] Although there is a study that attributes a decrease in absenteeism to mechanisms of the firm other than an increase in worker pay, the Department believes that the other evidence is strong enough to suggest a relationship between increased wages and reduced absenteeism.[129] The Department believes both the connection between minimum wages and absenteeism, and the connection between absenteeism and productivity are well enough established that this is a feasible benefit of the final rule.

Many commenters agreed with the Department's general benefit discussion, and mentioned reduced absenteeism as a likely benefit of this rule. For example, AFL–CIO noted that, ''The Unions agree with the central policy findings in the Order and the Proposed Rule: That '[r]raising the minimum wage enhances worker productivity and generates higher-quality work by boosting workers' health, morale and effort; reducing absenteeism and turnover; and lowering supervisory and training costs.' These findings have a firm empirical basis in the economic literature as the Proposed Rule's Regulatory Impact Analysis ably surveys.''

e. Reduced Poverty and Income Inequality

Raises in the minimum wage have been shown to reduce the level of poverty among the entire population, and specifically among children, within high impact areas.[130] Himmelstein and Venkataramani (2019) estimate that nearly 5 percent of people living in poverty are healthcare workers, and that a $15 per hour minimum wage increase would lead to 215,476 workers and 163,472 children lifted above the poverty line.[131] Reducing poverty will benefit historically marginalized communities, as they have the highest poverty rates. The CBO estimates that a $15 per hour minimum wage would alleviate poverty for 1.3 million Americans.[132] Although a reduction in poverty would be smaller for Federal contract workers to the extent that they are already earning at least $10.95 in 2021, the Department nonetheless believes that this final rule could alleviate poverty for some Federal contract workers. As noted in the NPRM and echoed by numerous worker advocacy organizations (including CLASP, the National Urban League, and the Shriver Center on Poverty Law), if a Federal contract worker works full time (40 hours per week for 52 weeks a year) at $10.95, their annual salary would be $22,776, which is below the 2020 Census Poverty Threshold for a family of four.[133] The reduction in poverty could also be larger for Federal contract workers in the U.S. territories, because prior to this rule, they could have been earning less than the minimum wage rate specified by Executive Order 13658. In their comment, Sindicato Puertorriqueño de Trabajadores (Puerto Rican Workers' Union, local 1996 of the International Union of Service Employees (SPT/SEIU)) noted that this rule will help reduce income inequality in Puerto Rico. They stated, ''It should be noted that 50% of the population lives below the poverty line and, according to a study from February 2020 by the Institute of Youth Development, 58% of our children live below the poverty line and 37%, in extreme poverty.''

Not only does a wage increase elevate earnings for the lowest earners working for Federal contractors, studies show that minimum wage increases can also reduce the income differential between the lowest earners and the highest earners, as well as between the lowest earners and the middle wage workers (Mishel 2014).[134] Income inequality is reduced with respect to all low-wage earners, but reduced income inequality across gender and race are additionally valuable considerations. Oka and Yamada (2019) found that increases in the minimum wage increased real wages for women, less educated, and younger workers.[135] Increasing the minimum

[124] Allen, S.G. (1983). How Much Does Absenteeism Cost? *Journal of Human Resources, 18*(3), 379–393. *https://www.jstor.org/stable/145207?seq=1.*

[125] Zhang, W., Sun, H., Woodcock, S., & Anis, A. (2013). Valuing Productivity Loss Due to Absenteeism: Firm-level Evidence from a Canadian Linked Employer-Employee Data. *Health Economics Review, 7*(3). *https://healtheconomicsreview.biomedcentral.com/articles/10.1186/s13561-016-0138-y.*

[126] Allen, S.G. (1983). How Much Does Absenteeism Cost? *Journal of Human Resources, 18*(3), 379–393. *https://www.jstor.org/stable/145207?seq=1.*

[127] Fairris, D., Runstein, D., Briones, C., & Goodheart, J. (2005). *Examining the Evidence: The Impact of the Los Angeles Living Wage Ordinance on Workers and Businesses.* LAANE. *https://laane.org/downloads/Examinig_the_Evidence.pdf.*

[128] Pfeifer, C. (2010). Impact of Wages and Job Levels on Worker Absenteeism. *International Journal of Manpower 31*(1), 59–72. *https://doi.org/10.1108/01437721011031694.*

[129] Dionne, G., & Dostie, B. (2007). New Evidence on the Determinants of Absenteeism Using Linked Employer-Employee Data. *Industrial and Labor Relations Review 61*(1), 108–120. *https://journals.sagepub.com/doi/abs/10.1177/001979390706100106.*

[130] Godoey, A., & Reich, M. (2021). Are Minimum Wage Effects Greater in Low-Wage Areas? *Industrial Relations A Journal of Economy and Society, 60*(1), 36–83. *https://doi.org/10.1111/irel.12267.*

[131] Himmelstein, K.E.W., & Venkataramani, A.S. (2019). Economic Vulnerability Among U.S. Female Health Care Workers: Potential Impact of a $15-per-Hour Minimum Wage. *American Journal of Public Health 109*(2), 198–205. doi:10.2105/AJPH.2018.304801.

[132] CBO. (2019, July). The Effects on Employment and Family Income of Increasing the Federal Minimum Wage (Publication No. 55410). *https://www.cbo.gov/publication/55410.*

[133] U.S. Census Bureau. Poverty Thresholds. *https://www.census.gov/data/tables/time-series/demo/income-poverty/historical-poverty-thresholds.html.*

[134] Mishel, L. (2014). The Tight Link Between the Minimum Wage and Wage Inequality. Economic Policy Institute. *https://www.epi.org/blog/tight-link-minimum-wage-wage-inequality/.*

[135] Oka, T., & Yamada, K. (2019, July). Heterogeneous Impact of the Minimum Wage:

wage has the potential to drastically aid those living in poverty, and as a disproportionate number of people of color are those currently impoverished (Creamer 2020),[136] increasing the minimum wage will aid in reducing racial income inequality. For example, EPI's analysis found that ''half of affected workers are Black or Hispanic, even though these groups comprise a smaller share of the overall workforce. Because they are otherwise paid disproportionately low wages, Black and Hispanic workers would also receive the largest pay increases.'' NELP also noted that many of the contracts that would be covered by this rule can be found in ''industries characterized by low pay and workforces largely comprised of BIPOC, women, and LGBTQ+ workers.'' They cite data showing, ''Federal agencies contract billions of dollars each year to businesses in industries like building services (13% Black, 41% Latinx, 56% female), administrative services (12% Black, 45% female), warehousing (22% Black, 20% Latinx), food service (14% Black, 27% Latinx, 52% female), security services (26% Black, 18% Latinx, 23% female), waste management and remediation (15% Black, 22% Latinx), and construction (30% Latinx).'' [137]

Reducing poverty for Federal contract workers could lead to increased productivity and efficiency, because it could increase worker morale and decrease absenteeism, as discussed above.

5. Impacts by Industry

This section analyzes the costs and transfers by industry relative to government contracting expenditures, revenues, and payroll. This analysis excludes territories because revenue and payroll data are not available for territories. The Department used Year 1 impacts rather than average annualized impacts to demonstrate the size of the impacts in the year where costs are largest. The Department considers total employer costs (direct costs and transfers) here because those are the relevant costs to businesses. The Department also limited the analysis to firms actively holding government contracts (*e.g.,* firms in USASpending in 2019 rather than all firms in SAM) to better approximate costs for firms with potentially affected employees. Including all firms would underestimate costs among truly affected firms.

Across all industries, total employer costs are about 0.4 percent of government contracting revenues (Table 11). Contracting revenue represents the revenue obtained by these firms specifically for work performed on Federal contracts. This measure may be most appropriate when considering cost pass-throughs to the Federal Government in the form of higher contract prices. Since many covered contractors garner revenue from non-Federal contracts, the transfer payment estimate is almost certainly a lower percentage of their total revenues. *See* section IV.B.3. for details on how Federal contracting expenditures are calculated. This analysis only includes employer costs associated with firms holding active SCA or DBA contracts (121,200). It excludes firms holding nonprocurement contracts because the Department believes these firms are not included in the USASpending data on Federal contracting revenues (*i.e.,* the denominator). Using this methodology, the industry where costs and transfers are estimated to be the largest share of contracting revenue is the accommodation and food services industry, where employer costs are 3.8 percent of Federal contracting revenues.

The Department also compared employer costs to estimated revenues and payrolls using the 2017 Statistics of U.S. Businesses (SUSB). Total revenues and payroll from SUSB were adjusted to reflect the share of businesses impacted by this rulemaking and estimated to have affected employees (166,700).[138] Total employer costs were then compared to these revenues and payrolls. This analysis includes both Federal contractors and firms holding nonprocurement contracts. Using this methodology, employer costs are less than 0.2 percent of revenues and less than 0.7 percent of payroll on average. The industry where costs and transfers are estimated to be the largest share of revenue is accommodation and food services (1.3 percent) and of payroll is retail trade (4.8 percent).

These findings are averages across 2-digit NAICS codes. When disaggregated to more detailed industries, the impacts would likely vary more. However, there is a tradeoff between providing an analysis at a more detailed level and maintaining adequate sample sizes to assess impacts with reasonable validity. Some commenters requested the Department conduct impact analyses specific to sub-industries, such as the outfitter and guide industry and the convenience services industry. However, sufficient data are generally not available to adequately assess impacts at this level of detail.

TABLE 11—COSTS AND TRANSFER PAYMENTS IN YEAR 1, FIRMS WITH AFFECTED WORKERS, AS SHARE OF COVERED CONTRACTING REVENUE

[2020$]

NAICS	Employer costs and transfers ($1,000s)	Covered contracting revenue (millions) [a]	Employer costs and transfers as share of contracting revenue (%)
11	$3,596	$413	0.87
21	88	104	0.08
22	1,134	2,428	0.05
23	153,351	36,124	0.42
31–33	53,478	28,950	0.18
42	485	163	0.30
44–45	5,288	331	1.60
48–49	88,680	14,389	0.62
51	10,163	10,198	0.10

Implications for Changes in Between- and Within-group Inequality. arXiv. *https://arxiv.org/pdf/1903.03925.pdf.*

[136] Creamer, J. (2020). Poverty Rates for Blacks and Hispanics Reached Historic Lows in 2019. U.S. Census Bureau. *https://www.census.gov/library/stories/2020/09/poverty-rates-for-blacks-and-hispanics-reached-historic-lows-in-2019.html.*

[137] George Faraday, ''Promises Broken #1'' (Washington, DC: Good Jobs Nation, 2018); Demographics by industry from the U.S. Bureau of Labor Statistics, ''Labor Force Statistics from the Current Population Survey,'' 2019 data.

[138] This includes 121,200 contractors from USASpending and 45,500 contractors operating on Federal properties or lands.

TABLE 11—COSTS AND TRANSFER PAYMENTS IN YEAR 1, FIRMS WITH AFFECTED WORKERS, AS SHARE OF COVERED CONTRACTING REVENUE—Continued

[2020$]

NAICS	Employer costs and transfers ($1,000s)	Covered contracting revenue (millions) [a]	Employer costs and transfers as share of contracting revenue (%)
52	11,742	12,633	0.09
53	657	942	0.07
54	241,156	152,717	0.16
55	1	0	0.45
56	522,303	36,754	1.42
61	27,813	4,301	0.65
62	94,295	11,233	0.84
71	952	82	1.16
72	38,714	1,030	3.76
81	26,656	2,718	0.98
	1,280,553	315,512	0.41

[a] *USASpending.gov* 2019. Contracting expenditures for covered procurement contracts. Inflated to 2020$ using the GDP deflator.

TABLE 12—COSTS AND TRANSFER PAYMENTS IN YEAR 1, FIRMS WITH AFFECTED WORKERS, AS SHARE OF FIRM REVENUE AND PAYROLL

[2020$]

NAICS	Employer costs and transfers ($1,000s)	Revenue (millions) [a]	Employer costs and transfers as share of revenue (%)	Payroll (millions) [a]	Employer costs and transfers as share of payroll (%)
11	$3,726	$4,167	0.089	$809	0.461
21	129	4,494	0.003	564	0.023
22	2,871	411,211	0.001	48,815	0.006
23	155,327	52,328	0.297	10,458	1.485
31–33	53,603	312,190	0.017	38,312	0.140
42	485	34,114	0.001	1,741	0.028
44–45	74,430	17,090	0.436	1,556	4.782
48–49	242,098	49,210	0.492	12,921	1.874
51	25,165	206,290	0.012	46,393	0.054
52	11,742	9,096	0.129	1,359	0.864
53	657	6,212	0.011	1,073	0.061
54	244,420	92,801	0.263	36,934	0.662
55	1	23	0.006	58	0.002
56	545,003	47,639	1.144	22,553	2.417
61	28,356	17,564	0.161	5,931	0.478
62	94,704	28,422	0.333	11,158	0.849
71	26,415	54,885	0.048	17,194	0.154
72	144,342	11,440	1.262	3,294	4.382
81	27,531	9,186	0.300	2,273	1.211
	1,718,696	1,368,361	0.126	263,395	0.653

[a] SUSB 2017. Inflated to 2020$ using the GDP deflator.

6. Regulatory Alternatives

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives. Executive Order 13563 directs agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; tailor the regulation to impose the least burden on society, consistent with achieving the regulatory objectives; and in choosing among alternative regulatory approaches, select those approaches that maximize net benefits. Executive Order 13563 further recognizes that some benefits are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify.

The Department notes that due to the prescriptive nature of Executive Order 14026, the Department does not have the discretion to implement alternatives that would violate the text of the Executive order, such as the adoption of a higher or lower minimum wage rate, or continued exemption of recreational businesses. However, the Department considered several alternatives to discretionary proposals set forth in this final rule.

First, as explained above, in this final rule, the Department defines the term *United States,* when used in a geographic sense, to mean the fifty states, the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf lands as defined in the Outer Continental Shelf Lands Act, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, Wake Island, and Johnston Island. This definition confers broader geographic scope of Executive Order 14026 than did the Department's prior

rulemaking implementing Executive Order 13658, which the Department interpreted to only apply to contracts performed in the fifty states and the District of Columbia.

The Department considered defining the term *United States* to exclude contracts performed in the territories listed above, consistent with the discretionary decision made in the Department's prior rulemaking implementing Executive Order 13658. Such an alternative would result in fewer contracts covered by Executive Order 14026 and fewer workers entitled to an initial $15 hourly minimum wage for work performed on or in connection with such contracts. This would result in a smaller income transfer to workers. The Department rejected this alternative because, as discussed more fully above in the preamble and as reflected in the RIA, the Department has further examined the issue since its prior rulemaking in 2014 and consequently determined that the Federal Government's procurement interests in economy and efficiency would be promoted by extending the Executive Order 14026 minimum wage to workers performing on or in connection with covered contracts in Puerto Rico, the Virgin Islands, Outer Continental Shelf lands as defined in the Outer Continental Shelf Lands Act, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, Wake Island, and Johnston Island.

The Department also rejected this alternative of excluding the territories from coverage of Executive Order 14026 because each of the territories listed above is covered by both the SCA, *see* 29 CFR 4.112(a), and the FLSA, *see, e.g.,* 29 U.S.C. 213(f); 29 CFR 776.7; Fair Minimum Wage Act of 2007, Public Law 110–28, 121 Stat. 112 (2007). Because contractors operating in those territories will generally have familiarity with many of the requirements set forth in part 23 based on their coverage under the SCA and/or the FLSA, the Department does not believe that the extension of Executive Order 14026 and part 23 to such contractors will impose a significant burden. Finally, as noted earlier in Section II(B)'s discussion of the Executive Order's geographic coverage, several elected officials and other commenters wrote in support of applying Executive Order 14026 to contract work performed in U.S. territories.

Second, pursuant to the Department's authority to adopt, ''as appropriate, exclusions from the requirements of [the order],'' 86 FR 22836, the Department includes in this final rule, as it did in the regulations implementing Executive Order 13658, an exclusion from coverage for FLSA-covered workers who spend less than 20 percent of their work hours in a workweek performing ''in connection with'' covered contracts. Under the final rule, this exclusion does not apply to any worker performing ''on'' a covered contract whose wages are governed by the FLSA, SCA, or DBA. This exclusion, which appears in § 23.40(f), is explained in greater detail in the discussion of the Exclusions section of this final rule. The Department considered alternatives related to this exclusion.

As the first alternative related to this exclusion, the Department considered eliminating the exclusion for FLSA-covered workers performing in connection with covered contracts for less than 20 percent of their workhours in a given workweek. The Department considered the elimination of this exclusion as an alternative, in part because Executive Order 14026 expressly states that its minimum wage protections apply to ''workers working on or in connection with'' covered contracts. 86 FR 22835.

As the second alternative pertaining to this exclusion, the Department considered raising the 20 percent threshold for this exclusion for FLSA-covered workers performing in connection with covered contracts. The Department assessed raising the threshold but does not have the discretion to entirely exclude these workers because the Executive order itself directs that they be generally covered.

The Department lacks data on how much time FLSA-covered workers spend in connection with covered contracts and is therefore unable to identify how many FLSA-covered workers perform services in connection with covered contracts for less than 20 percent of their work hours in a workweek. As a result, the Department provides a qualitative discussion of the alternatives.

If the Department were to omit this exclusion, more workers would be covered by the rule, and contractors would be required to pay more workers the applicable minimum wage rate (initially $15 per hour) for time spent performing in connection with covered contracts. This would result in greater income transfers to workers. Conversely, if the Department were to raise the 20 percent threshold, fewer workers would be covered by the rule, resulting in a smaller income transfer to workers.

The Department rejected these regulatory alternatives because having an exclusion for FLSA-covered workers performing in connection with covered contracts based on a 20 percent of hours worked in a week standard is a reasonable interpretation. The exclusion ensures the broad coverage of workers performing on or in connection with covered contracts directed by Executive Order 14026 while also acknowledging the administrative challenges imposed by such broad coverage as expressed by contractors during the Executive Order 13658 rulemaking. The Department believes that the exclusion will assist both contractors and workers in adjusting to the requirements of Executive Order 14026 and reduce costs while ensuring broad application of the Executive order minimum wage.

V. Final Regulatory Flexibility Analysis (FRFA)

The Regulatory Flexibility Act of 1980 (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), hereafter jointly referred to as the RFA, requires agencies to prepare regulatory flexibility analyses when they propose regulations that will have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 603. Based on the analysis below, this rule is not expected to have a significant economic impact on a substantial number of small entities.

A. Need for Rulemaking

On April 27, 2021, President Joseph R. Biden, Jr. issued Executive Order 14026, ''Increasing the Minimum Wage for Federal Contractors.'' The Executive order states that the Federal Government's procurement interests in economy and efficiency are promoted when the Federal Government contracts with sources that adequately compensate their workers. The Executive order therefore seeks to raise the hourly minimum wage paid by those contractors to workers performing work on or in connection with covered Federal contracts to $15.00 per hour, beginning January 30, 2022; and beginning January 1, 2023, and annually thereafter, an amount determined by the Secretary of Labor (Secretary). The Executive order directs the Secretary to issue regulations by November 24, 2021, consistent with applicable law, to implement the order's requirements. This final rule therefore establishes standards and procedures for implementing and enforcing the minimum wage protections of the Executive order.

B. Number of Affected Small Entities and Employees

The total number of potentially affected firms (507,200) is explained in

section IV.B.2. This section describes how the Department determined that 385,100 of those firms are smallentities. The RFA defines a ''small entity'' as a (1) small not-for-profit organization, (2) small governmental jurisdiction, or (3) small business. SBA establishes separate standards for each 6-digit NAICS industry code, and standard cutoffs are typically based on either the average annual number of employees or average annual receipts. For example, businesses may be defined as small if employing fewer than 100 to 1,500 employees, depending on the NAICS. In other industries, firms are small if annual receipts are less than $1 million to $41.5 million.[139]

The Department used three methods to identify small firms based on the data source:

1. For firms identified in SAM, the Department identified small contractors based on the six-digit NAICS code listed as their primary NAICS and whether SAM flagged the firm as small in that NAICS.[140] Of the 428,300 firms in SAM, 327,900 are small firms. The data in SAM is self-reported, so firms may not always indicate if they are small, or may not update their data, which may result in firms being listed as small when they no longer are. As a result, it is uncertain whether the number of small firms in SAM may be an under- or over-estimate.

2. Because some subcontractors may not be in SAM, the Department supplemented the SAM data with USAspending data (*see* section IV.B.2). To identify small subcontractors in the USASpending data, the Department searched for keywords ''Small'' or ''SBA'' in the business type field. Of the 33,500 subcontractors identified, 12,200 are small firms.

3. For entities operating under covered contracts on Federal properties or lands (*see* section IV.B.2), the Department applied the national ratio of businesses with less than 500 employees to total businesses, by industry, from the 2017 Statistics of U.S. Businesses (SUSB) data. The Department used businesses with fewer than 500 employees as a rough approximation for small businesses.[141] Of the 45,500 firms identified, 45,000 are small firms.

4. For territories, the Department used the ''Contracting Officer's Determination of Business Size'' in USASpending data. Of the 1,245 firms identified, 841 are small firms.

This estimated number of potentially affected small contractors includes some firms with no current Federal contracts covered by the Executive order. These firms may accrue regulatory familiarization costs despite not having employees affected, although their cost will be minimal. However, these firms should be removed when we consider costs per establishment with affected employees. Information was not available to eliminate these firms from the SAM database. Thus, the Department used data from USASpending to estimate a more appropriate number of small contractors with affected employees. Using the 2019 USASpending database, the Department found 64,500 private small prime contracting firms.[142] [143] Adding in the small subcontractors and the small entities operating under covered contracts on Federal properties or lands, yields an estimated 121,700 small contractors with active contracts in Year 1.

The number of employees in small contracting firms is unknown. The Department estimated the share of total Federal contracting expenditures in the USASpending data associated with contractors labeled as small, by industry. The Department then applied these shares to all affected employees to estimate the share of affected employees in small entities by industry, then summed over all industries, to find that 97,900 employees of small contractors would be affected by the rule in Year 1 (Table 13).

In industries where the number of affected employees is smaller than the number of affected firms, the Department reduced the number of affected firms to the number of affected employees. This results in an estimated 67,700 small contractors with affected employees in Year 1. The calculations of direct costs and transfers per small contractor with affected employees, shown in Table 15 and Table 16, include only these 67,700 small firms.

TABLE 13—SMALL FEDERAL CONTRACTING FIRMS AND THEIR EMPLOYEES

NAICS	Contractors [a]		% of Expenditure in small contracting firms [c]	% of Affected employees in small contracting firms	Affected employees	
	Total	Small [b]			Total	Small
11	5,891	4,215	79.8	79.8	530	423
21	1,209	1,067	27.7	27.7	16	4
22	5,136	4,148	10.9	10.9	437	48
23	59,968	47,996	44.0	44.0	30,028	13,200
31–33	55,688	42,481	11.2	11.2	10,291	1,157
42	20,324	17,252	66.7	66.7	78	52
44–45	10,150	9,116	37.1	37.1	15,225	5,652
48–49	22,145	19,387	21.2	21.2	42,284	8,976
51	19,571	17,191	22.8	22.8	4,884	1,112
52	3,713	2,382	3.0	3.0	2,428	73
53	20,247	8,012	58.0	58.0	112	65
54	119,289	93,513	31.4	31.4	48,126	15,093

[139] The most recent SBA size definitions were set in August 2019. *See https://www.sba.gov/document/support--table-size-standards.* However, some exceptions do exist, for example, depository institutions (including credit unions, commercial banks, and non-commercial banks) are classified by total assets.

[140] The ''NAICS CODE STRING'' variable (column 33) and the ''PRIMARY NAICS'' variable (column 31) were the specific variables used. If the primary NAICS value contained a ''Y'' at the end when listed in the ''NAICS CODE STRING'' column, the firm was identified as small.

[141] As noted above, the SBA size standard definitions vary by industry, but the Department believes businesses with less than 500 employees is a transparent method that provides a reasonable approximation of the number of firms SBA defines as small businesses. Additionally, to apply the separate definitions by NAICS codes, the most recent data available with the information needed is the 2012 SUSB.

[142] In the USASpending data, small contractors were identified based on the ''contractingofficerbusinesssizedetermination'' variable. The description of this variable in the *USASpending.gov* Data Dictionary is: ''The Contracting Officer's determination of whether the selected contractor meets the small business size standard for award to a small business for the NAICS code that is applicable to the contract.'' The Data Dictionary is available at: *https://www.usaspending.gov/data-dictionary.*

[143] This number is smaller than the number of small firms listed in SAM because it only includes firms with active covered contracts.

TABLE 13—SMALL FEDERAL CONTRACTING FIRMS AND THEIR EMPLOYEES—Continued

NAICS	Contractors [a]		% of Expenditure in small contracting firms [c]	% of Affected employees in small contracting firms	Affected employees	
	Total	Small [b]			Total	Small
55	551	259	0.0	0.0	0	0
56	39,261	32,615	27.7	27.7	104,544	28,979
61	17,188	11,717	33.9	33.9	6,119	2,074
62	36,587	16,916	21.3	21.3	18,808	4,013
71	29,195	27,654	65.5	65.5	5,648	3,697
72	15,587	13,186	37.7	37.7	25,060	9,444
81	24,277	15,143	25.5	25.5	5,505	1,402
Sum	505,977	384,252	28.3	28.3	320,124	95,465
Territories	1,245	841	33.6	33.6	7,186	2,412
Total	507,222	385,093	28.4	28.4	327,310	97,877

[a] Source: SAM May 2021. Companies with a missing primary NAICS code or a code of 92 are distributed proportionately amongst all industries. All firms are assumed to be potentially affected. Includes 33,485 additional subcontractors identified in *USASpending.gov* from 2015–2019 and includes 45,454 firms with operations on Federal properties or lands. For territories, data from *USASpending.gov* 2019. These firms in territories are then subtracted from the SAM firm counts by NAICS to avoid double-counting.

[b] Includes 12,151 additional subcontractors identified in *USASpending.gov* as small and 45,016 firms with operations on Federal land or property as small.

[c] Source: *USASpending.gov*. Percentage of contracting expenditures for covered contracts in small businesses in 2019.

C. Small Entity Costs of the Final Rule

Small entities will have regulatory familiarization, implementation, and payroll costs (*i.e.,* transfers). These are discussed in detail in section IV.C.2 and IV.C.3. and summarized below. Total direct costs (*i.e.,* excluding transfers) to small contractors in Year 1 were estimated to be $11.3 million (Table 14). This is 66 percent of total direct costs, among all firms, in Year 1 (compared with 30 percent of affected employees in small contracting firms). Calculation of these costs is discussed in the following paragraphs.

Regulatory familiarization costs apply to all small firms that potentially hold covered contracts (385,100). Regulatory familiarization costs were assumed to take one half hour of time per firm. This is an average across potentially affected contractors of all sizes and those with and without affected employees. An hour of a Compensation, Benefits, and Job Analysis Specialist's time is valued at $52.65 per hour.[144] [145]

Contractors with affected employees will experience implementation costs. For each affected employee, a worker will have to implement the changes and a manager will need to make minimal staffing changes and considerations. There will be costs to adjust the pay rate in the records and tell the affected employees, among other minimal staffing changes and considerations made by managers The Department splits a total implementation time of 10 minutes per affected employee between a Compensation, Benefits, and Job Analysis Specialist and a manager. Because of this component, costs vary with contractor size. Compensation, Benefits, and Job Analysis Specialists earn a loaded hourly wage of $52.65 per hour.[146] Workers in management occupations earn a loaded hourly wage of $86.02 per hour.[147] The estimated number of newly affected employees in Year 1 is 97,900 (Table 13). Therefore, total Year 1 implementation costs were estimated to equal $1.1 million ([$52.65 × 5 minutes × 97,900 employees] + [$86.02 × 5 minutes × 97,900 employees]).

To calculate payroll costs, the Department began with total transfers estimated in section IV.C.3. and multiplied this by the ratio of affected employees in small contracting firms to all affected employees. This yields the share of transfers occurring in small Federal contracting firms, $508.1 million in Year 1 (Table 14), which is 30 percent of total transfers for all contracting firms in Year 1.

TABLE 14—COSTS AND TRANSFERS TO SMALL CONTRACTORS IN YEAR 1

[2020$]

NAICS	Direct employer costs ($1,000s)			Transfers in 2020$ ($1,000s)
	Regulatory familiarization	Implementation	Total	
11	$111	$5	$116	$2,918
21	28	0	28	34
22	109	1	110	301
23	1,263	153	1,416	67,929
31–33	1,118	13	1,132	5,975

[144] This includes the mean base wage of $32.30 from the OEWS plus benefits paid at a rate of 46 percent of the base wage, as estimated from the BLS's ECEC data, plus 17 percent for overhead. OEWS data available at: *https://www.bls.gov/oes/current/oes131141.htm.*

[145] Time and wage estimates for small establishments are the same as those used in the analysis for all contractors. The Department has not tailored these to small businesses due to lack of data.

[146] OEWS May 2020 reports a median base wage of $32.30 for compensation, benefits, and job analysis specialist. The Department supplemented this base wage with benefits paid at a rate of 46 percent of the base wage, as estimated from the BLS's ECEC data, and overhead costs of 17 percent. OEWS data available at: *http://www.bls.gov/oes/current/oes131141.htm.*

[147] OEWS May 2020 reports a median base wage of $52.77 for management occupations. The Department supplemented this base wage with benefits paid at a rate of 46 percent of the base wage, as estimated from the BLS's ECEC data, and overhead costs of 17 percent. OEWS data available at: *https://www.bls.gov/oes/current/oes110000.htm.*

TABLE 14—COSTS AND TRANSFERS TO SMALL CONTRACTORS IN YEAR 1—Continued

[2020$]

NAICS	Direct employer costs ($1,000s)			Transfers in 2020$ ($1,000s)
	Regulatory familiarization	Implementation	Total	
42	454	1	455	303
44–45	240	65	305	27,545
48–49	510	104	614	51,235
51	453	13	465	5,660
52	63	1	64	349
53	211	1	212	339
54	2,462	174	2,636	76,167
55	7	0	7	0
56	859	335	1,193	150,625
61	308	24	332	9,556
62	445	46	492	20,121
71	728	43	771	16,814
72	347	109	456	54,225
81	399	16	415	6,938
Sum	10,115	1,103	11,218	497,033
Territories	22	28	50	11,041
Total	10,137	1,131	11,268	508,074

To assess the impact on small contracting firms with affected employees, the Department assumed that affected employees would be distributed uniformly over small contracting firms within each industry. In an industry with fewer affected employees than firms, the Department assumed one affected employee would be in each firm with affected employees. For example, in NAICS 11, there are 423 affected workers and 2,199 small contractors with potentially affected workers. The Department assumed that 423 of the 2,199 firms would each have one affected worker. In industries in which the number of affected workers exceeds the number of small contractors, the Department divided the number of affected workers by the number of small contractors. For example, in NAICS 44–45, the Department assumed each of the 2,032 small firms had 2.8 affected workers per firm (5,652 affected workers divided by 2,032 small firms). Table 15 contains the average costs and transfers per small contractor with affected employees by industry. Average Year 1 costs and transfers per small contractor with affected employees range from $4,578 to $14,221 by industry.

TABLE 15—AVERAGE COSTS AND TRANSFERS PER SMALL CONTRACTOR WITH AFFECTED EMPLOYEES IN YEAR 1

[2020$]

NAICS [a]	Small contractors with potentially affected employees [b]	Small contractors with affected employees	Direct employer costs per small contractor	Transfers (increased wages) per small contractor	Total costs and transfers (increased wages) per small contractor
11	2,199	423	$30.71	$6,898	$6,928
21	155	4	30.71	7,629	7,660
22	2,757	48	30.71	6,307	6,338
23	11,923	11,923	31.18	5,697	5,728
31–33	5,910	1,157	30.71	5,163	5,194
42	443	52	30.71	5,801	5,832
44–45	2,032	2,032	38.53	13,557	13,595
48–49	7,908	7,908	31.30	6,479	6,510
51	8,073	1,112	30.71	5,088	5,119
52	181	73	30.71	4,819	4,849
53	1,995	65	30.71	5,222	5,253
54	24,733	15,093	30.71	5,046	5,077
55	0	0	N/A	N/A	N/A
56	10,621	10,621	38.30	14,182	14,221
61	2,275	2,074	30.71	4,607	4,637
62	4,035	4,013	30.71	5,014	5,045
71	24,677	3,697	30.71	4,548	4,578
72	5,205	5,205	34.28	10,417	10,452
81	5,710	1,402	30.71	4,950	4,980
Sum	120,834	66,903	N/A	N/A	N/A
Territories	841	841	38.91	13,129	13,168

TABLE 15—AVERAGE COSTS AND TRANSFERS PER SMALL CONTRACTOR WITH AFFECTED EMPLOYEES IN YEAR 1—Continued

[2020$]

NAICS [a]	Small contractors with potentially affected employees [b]	Small contractors with affected employees	Direct employer costs per small contractor	Transfers (increased wages) per small contractor	Total costs and transfers (increased wages) per small contractor
Total	121,675	67,744	N/A	N/A	N/A

[a] 11 = Agriculture, forestry, fishing and hunting; 21 = Mining; 22 = Utilities; 23 = Construction; 31–33 = Manufacturing; 42 = Wholesale trade; 44–45 = Retail trade; 48–49 = Transportation and warehousing; 51 = Information; 52 = Finance and insurance; 53 = Real estate and rental and leasing; 54 = Professional, scientific, and technical services; 55 = Management of companies and enterprises; 56 = Administrative and waste services; 61 = Educational services; 62 = Health care and social assistance; 71 = Arts, entertainment, and recreation; 72 = Accommodation and food services; 81=Other services.

[b] Source: *USASpending.gov* 2019. Firms with contracting revenue, excluding contracts only for goods. Also includes 12,151 additional sub-contractors identified in *USASpending.gov* from 2015–2019 and 45,016 firms with operations on Federal properties or lands.

To estimate whether these costs and transfers will have a substantial impact on these small entities with affected employees, they are compared to total revenues for these firms. Based on SUSB data, small Federal contractors with affected employees had total annual revenues of $115.1 billion from all sources (Table 16).[148] Transfers from small contractors and costs to small contractors in Year 1 ($499.2 million) are about 0.4 percent of revenues on average and exceed 1.0 percent in only the administrative and waste services industry (1.1 percent). Additionally, much of this cost will either be reimbursed by the Federal Government or offset by productivity gains and cost-savings. Therefore, the Department believes this final rule will not have a significant impact on small businesses.

TABLE 16—COSTS AND TRANSFERS AS SHARE OF REVENUE IN SMALL CONTRACTING FIRMS IN YEAR 1 [a]

NAICS	Total costs and transfers ($1,000s)	Small contracting firm revenues (billions) [b]	Total as share of revenues (%)
11	$2,931	$0.6	0.489
21	34	0.0	0.121
22	302	0.9	0.033
23	68,300	27.1	0.252
31–33	6,010	6.6	0.091
42	305	0.5	0.057
44–45	27,624	6.4	0.430
48–49	51,483	15.2	0.339
51	5,694	3.7	0.154
52	352	0.2	0.168
53	341	0.1	0.385
54	76,630	20.0	0.383
55	N/A	0.0	N/A
56	151,031	13.1	1.149
61	9,620	3.3	0.293
62	20,245	5.9	0.344
71	16,927	4.7	0.358
72	54,403	5.5	0.988
81	6,981	1.3	0.555
	499,213	115.1	0.434

[a] Excludes U.S. territories because SUSB does not include territories.

[b] Source: Total revenue for firms with less than 500 employees from 2017 SUSB, inflated to 2020$ using the GDP Deflator. Revenues for small contractors calculated by multiplying total revenue by the ratio of small contracting firms to total number of small firms (approximated by those with less than 500 employees in the 2017 SUSB).

To estimate average annualized costs to small contracting firms the Department projected small business costs and transfers forward 9 years. To do this, the Department calculated the ratio of affected employees in small contracting firms to all affected employees in Year 1, then multiplied this ratio by the 10-year projections of national costs and transfers (*see* section IV.C.). This yields the share of projected costs and transfers attributable to small businesses (Table 17).

[148] Total revenue for small firms from 2017 SUSB; inflated to 2020$ using the GDP deflator. Revenues for small contractors calculated by multiplying total revenue by the ratio of contracting firms that are small.

TABLE 17—PROJECTED COSTS TO SMALL BUSINESSES

(Millions of 2020$)

Year/discount rate	Direct employer costs	Transfers	Total
Years 1 Through 10			
Year 1	$11.3	$508.1	$519.3
Year 2	0.0	511.1	511.1
Year 3	0.0	514.2	514.2
Year 4	0.0	517.3	517.3
Year 5	0.0	520.5	520.5
Year 6	0.0	523.6	523.6
Year 7	0.0	526.8	526.8
Year 8	0.0	530.0	530.0
Year 9	0.0	533.2	533.2
Year 10	0.0	536.5	536.5
Average Annualized Amounts			
3% discount rate	1.3	521.4	522.7
7% discount rate	1.5	520.4	521.9

D. Response to Public Comments on Issues Related to Small Businesses

Several commenters claimed that the Department underestimated the impacts to small businesses. Some stated that small businesses are already at a disadvantage for obtaining federal contracts and that this regulation further exacerbates this disadvantage. For example, Representatives Foxx and Keller claimed that ''[s]mall businesses already face significant challenges when it comes to participating in the federal procurement process'' and that this rule will increase these challenges. However, these commenters did not provide data or information on how these costs would impact small businesses in particular. Other commenters noted that the Department did not include the cost of extra overtime to small businesses. For example, SBA Advocacy said, ''Small recreational businesses such as outfitters and guides commented that the higher minimum wage requirement would be extremely costly and unprofitable because they operate multi-day trips in National Parks and log many overtime wage hours; at a cost of $22.50 per hour the increased costs would have a significant impact.'' As discussed in Section IV.3.b, the Department has added in an estimate of increased overtime payments for all businesses. Even with the inclusion of these increased payments, costs are still only 0.4% of revenues for small contracting firms. Other commenters claimed the Department underestimated costs for a specific subset of small businesses. The National Automatic Merchandising Association commented that the Department needs to conduct an impact analysis for small businesses in the convenience services industry. The AOA generally stated that the ''Proposed Rule wholly fails to account for its impact on the outfitter and guiding industry.'' The Department notes that the small business impacts presented are average impacts, meaning that some small businesses will have smaller impacts while others will have larger impacts. The Department conducted its analysis at a higher level of industry aggregation because sufficient data at a more detailed level are generally not available.[149] Additionally, the AOA claimed that the Department failed to include the payroll costs from increasing wages that are not on or in connection with a federal contract, stating that there are ''small businesses that may be more likely to have employees splitting time between federal and non-federal work.'' As noted in section IV.C.2.b., paying workers the minimum wage specified in this rule is not required for non-federal contract work and the Department disagrees that paying a worker different hourly wage rates imposes a high cost on businesses.

E. Response to Comment Filed by the Chief Council for Advocacy of the Small Business Administration

SBA Advocacy submitted a comment in response to the Department's proposed rule. The Department has responded to specific parts of SBA Advocacy's comment throughout this final rule in the relevant discussions, but has also provided a summary here.

As a threshold matter, SBA asserted that because the Department ''provided an Initial Regulatory Flexibility Analysis (IRFA), indicating that the proposed rule will have a significant economic impact on a substantial number of small entities,'' the Department's certification under Section 605 of the RFA that the rule will not have a significant economic impact on a substantial number of small entities ''lacks a factual basis and is invalid.'' The Department disagrees that the NPRM's inclusion of an IFRA constituted an acknowledgment that the rule will have a significant economic impact on a substantial number of small entities. Rather, as we did in the 2014 final rule to implement Executive Order 13658,[150] the Department prepared an IFRA in its proposed rule as a courtesy to the public to better understand the rulemaking to implement Executive Order 14026 and its impact on small entities.

SBA Advocacy's comment further stated that they are concerned that the proposed rule will result in financial hardship for affected small businesses and that they believe that DOL has underestimated small business compliance costs. The Department notes that all direct employer costs, such as rule familiarization and implementation costs, are an average. Some contractors will spend more time reviewing the rule and implementing any changes, and some contractors will spend less or no time. Additionally, regarding wage costs, which are characterized as

[149] For example, outfitters is a subset of the 6-digit NAICS for ''all other amusement and recreation'' industries. Even if adequate data are available for this 6-digit NAICS, that still does not adequately reflect the outfitter industry.

[150] *See* 79 FR 60705 (''After careful consideration of the comments received and based on the analysis below, the Department believes that this final rule will not have an appreciable economic impact on the vast majority of small businesses subject to [Executive Order 13658]. However, in the interest of transparency, the Department has prepared the following Final Regulatory Flexibility Analysis (FRFA) to aid the public in understanding the small entity impacts of the final rule.'').

transfers in the regulatory impact analysis, the estimate of per business cost also represents an average. Some businesses may have many employees who currently earn the Executive Order 13658 minimum wage, but others may currently be paying their employees closer to $15, so will have a much lower wage cost.

SBA also said that the Department should consider regulatory alternatives that would minimize the impact of the rule on small entities. At both the NPRM stage and in this final rule, the Department has explained why any alternatives are foreclosed by the prescriptive language used in Executive Order 14026.

F. Alternatives to the Final Rule

Executive Order 14026 is prescriptive and does not authorize the Department to consider less burdensome alternatives for small businesses. The Department requested comments that identify alternatives that would accomplish the stated objectives of Executive Order 14026 and minimize any significant economic impact of the proposed rule on small entities. Below, the Department considers the specific alternatives required by section 603(c) of the RFA.

1. Differing Compliance and Reporting Requirements for Small Entities

This final rule provides for no differing compliance requirements and reporting requirements for small entities. The Department has strived to have this rule implement the minimum wage requirements of Executive Order 14026 with the least possible burden for small entities. The final rule provides a number of efficient and informal alternative dispute mechanisms to resolve concerns about contractor compliance, including having the contracting agency provide compliance assistance to the contractor about the minimum wage requirements, and allowing for the Department to attempt an informal conciliation of complaints instead of engaging in extensive investigations. These tools will provide contractors with an opportunity to resolve inadvertent errors rapidly and before significant liabilities develop.

Some commenters stated that the Department did not fulfill the requirements of the RFA because it did not provide alternatives such as excluding small businesses from the regulation or a phasing-in of the requirements for small businesses. The Department believes that such alternatives are foreclosed by the prescriptive language used in Executive Order 14026. The Executive order itself establishes the basic coverage provisions, sets the minimum wage, and establishes the timeframe when the minimum wage rate becomes effective. Section 3 of Executive Order 14026 gradually phases in the full Executive order minimum cash wage rate for tipped employees. With that lone exception, the order clearly requires that, as of January 30, 2022, workers performing on or in connection with covered contracts must be paid $15 per hour unless exempt. There is no indication in the Executive order that the Department has authority to modify the amount or timing of the minimum wage requirement, except where the Department is expressly directed to implement the future annual inflation-based adjustments to the wage rate pursuant to the methodology set forth in the order. *See* 86 FR 22835–39. In any event, the Department has determined that this rule would not significantly impact small businesses and thus believes it is not necessary to provide differing requirements for small businesses. Additionally, the Department believes that having different requirements for small businesses would undermine the benefits of improved government services and increased productivity. It would also cause inequality between employees of small businesses and those of large businesses.

2. Clarification, Consolidation, and Simplification of Compliance and Reporting Requirements for Small Entities

This final rule was drafted to clearly state the compliance requirements for all contractors subject to Executive Order 14026. The final rule does not contain any reporting requirements. The recordkeeping requirements imposed by this final rule are necessary for contractors to determine their compliance with the rule as well as for the Department and workers to determine the contractor's compliance with the law. The recordkeeping provisions apply generally to all businesses—large and small—covered by the Executive order; no rational basis exists for creating an exemption from compliance and recordkeeping requirements for small businesses. The Department makes available a variety of resources to employers for understanding their obligations and achieving compliance.

3. Use of Performance Rather Than Design Standards

This final rule was written to provide clear guidelines to ensure compliance with the Executive order minimum wage requirements. Under the final rule, contractors may achieve compliance through a variety of means. The Department makes available a variety of resources to contractors for understanding their obligations and achieving compliance.

4. Exemption From Coverage of the Rule for Small Entities

Executive Order 14026 establishes its own coverage and exemption requirements; therefore, the Department has no authority to exempt small businesses from the minimum wage requirements of the order.

VI. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1532, requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing any Federal mandate that may result in excess of $100 million (adjusted annually for inflation) in expenditures in any one year by state, local, and tribal governments in the aggregate, or by the private sector. This statement must: (1) Identify the authorizing legislation; (2) present the estimated costs and benefits of the rule and, to the extent that such estimates are feasible and relevant, its estimated effects on the national economy; (3) summarize and evaluate state, local, and Tribal government input; and (4) identify reasonable alternatives and select, or explain the non-selection, of the least costly, most cost-effective, or least burdensome alternative.

A. Authorizing Legislation

This final rule is issued in response to section 4 of Executive Order 14026, ''Increasing the Minimum Wage for Federal Contractors,'' which instructs the Department to ''issue regulations by November 24, 2021, to implement the requirements of this order.'' 86 FR 22836.

B. Assessment of Costs and Benefits

For purposes of the UMRA, this final rule includes a Federal mandate that would result in increased expenditures by the private sector of more than $158 million in at least one year, and could potentially result in increased expenditures by state and local governments that hold contracts with the Federal Government.[151] It will not result in increased expenditures by Tribal govenments because they are

[151] Calculated using growth in the Gross Domestic Product deflator from 1995 to 2020. Bureau of Economic Analysis. Table 1.1.9. Implicit Price Deflators for Gross Domestic Product.

generally excluded from coverage under section 8(c) of the order. In the Department's experience, state and local governments are parties to a relatively small number of SCA- and DBA-covered contracts. Additionally, because costs are a small share of revenues, impacts to governments and tribes should be small.

The Department determined that the final rule would result in Year 1 direct employer costs to the private sector of $17.1 million, in regulatory familiarization and implementation costs. The final rule will also result in transfer payments for the private sector of $1.7 billion in Year 1, with an average annualized value of $1.8 billion over ten years.

UMRA requires agencies to estimate the effect of a regulation on the national economy if such estimates are reasonably feasible and the effect is relevant and material.[152] However, OMB guidance on this requirement notes that such macroeconomic effects tend to be measurable in nationwide econometric models only if the economic effect of the regulation reaches 0.25 percent to 0.5 percent of Gross Domestic Product (GDP), or in the range of $52.3 billion to $104.7 billion (using 2020 GDP).[153] A regulation with a smaller aggregate effect is not likely to have a measurable effect in macroeconomic terms, unless it is highly focused on a particular geographic region or economic sector, which is not the case with this rule.

The Department's RIA estimates that the total costs of the final rule will be $1.8 billion. Given OMB's guidance, the Department has determined that a full macroeconomic analysis is not likely to show that these costs would have any measurable effect on the economy.

VII. Executive Order 13132, Federalism

The Department has (1) reviewed this final rule in accordance with Executive Order 13132 regarding federalism and (2) determined that it does not have federalism implications. The final rule 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.

VIII. Executive Order 13175, Indian Tribal Governments

This final rule will not have tribal implications under Executive Order 13175 that would require a tribal summary impact statement. The final rule will not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

List of Subjects in 29 CFR Parts 10 and 23

Administrative practice and procedure, Construction, Government contracts, Law enforcement, Minimum wages, Reporting and recordkeeping requirements, Wages.

For the reasons set out in the preamble, the Department of Labor amends 29 CFR subtitle A as follows:

PART 10—ESTABLISHING A MINIMUM WAGE FOR CONTRACTORS

■ 1. The authority citation for part 10 is revised to read as follows:

Authority: 5 U.S.C. 301; section 4, E.O. 13658, 79 FR 9851, 3 CFR, 2014 Comp., p. 219; section 4, E.O. 14026, 86 FR 22835; Secretary of Labor's Order No. 01–2014, 79 FR 77527.

■ 2. Amend § 10.1 by adding paragraph (d) to read as follows:

§ 10.1 Purpose and scope.

* * * * *

(d) *Relation to Executive Order 14026.* As of January 30, 2022, Executive Order 13658 is superseded to the extent that it is inconsistent with Executive Order 14026 of April 27, 2021, ''Increasing the Minimum Wage for Federal Contractors,'' and its implementing regulations at 29 CFR part 23. A covered contract that is entered into on or after January 30, 2022, or that is renewed or extended (pursuant to an option or otherwise) on or after January 30, 2022, is generally subject to the higher minimum wage rate established by Executive Order 14026 and its regulations at 29 CFR part 23.

■ 3. Amend § 10.2 by revising the definition of ''New contract'' to read as follows:

§ 10.2 Definitions.

* * * * *

New contract means a contract that results from a solicitation issued on or between January 1, 2015 and January 29, 2022, or a contract that is awarded outside the solicitation process on or between January 1, 2015 and January 29, 2022. This term includes both new contracts and replacements for expiring contracts. It does not apply to the unilateral exercise of a pre-negotiated option to renew an existing contract by the Federal Government. For purposes of the Executive Order, a contract that is entered into prior to January 1, 2015 will constitute a new contract if, through bilateral negotiation, on or between January 1, 2015 and January 29, 2022:

(1) The contract is renewed;

(2) The contract is extended, unless the extension is made pursuant to a term in the contract as of December 31, 2014, providing for a short-term limited extension; or

(3) The contract is amended pursuant to a modification that is outside the scope of the contract.

* * * * *

§ 10.4 [Amended]

■ 4. Amend § 10.4 by removing paragraph (g).

■ 5. Amend § 10.5 by adding a sentence at the end of paragraph (c) to read as follows:

§ 10.5 Minimum wage for Federal contractors and subcontractors.

* * * * *

(c) * * * A covered contract that is entered into on or after January 30, 2022, or that is renewed or extended (pursuant to an option or otherwise) on or after January 30, 2022, is generally subject to the higher minimum wage rate established by Executive Order 14026 of April 27, 2021, ''Increasing the Minimum Wage for Federal Contractors,'' and its regulations at 29 CFR part 23.

■ 6. Add part 23 to read as follows:

PART 23—INCREASING THE MINIMUM WAGE FOR FEDERAL CONTRACTORS

Subpart A—General

Sec.
23.10 Purpose and scope.
23.20 Definitions.
23.30 Coverage.
23.40 Exclusions.
23.50 Minimum wage for Federal contractors and subcontractors.
23.60 Antiretaliation.
23.70 Waiver of rights.
23.80 Severability.

Subpart B—Federal Government Requirements

23.110 Contracting agency requirements.
23.120 Department of Labor requirements.

Subpart C—Contractor Requirements

23.210 Contract clause.
23.220 Rate of pay.
23.230 Deductions.
23.240 Overtime payments.
23.250 Frequency of pay.
23.260 Records to be kept by contractors.
23.270 Anti-kickback.
23.280 Tipped employees.
23.290 Notice.

[152] *See* 2 U.S.C. 1532(a)(4).

[153] According to the Bureau of Economic Analysis, 2020 GDP was $20.9 trillion. *https://www.bea.gov/sites/default/files/2021-04/gdp1q21_adv.pdf.*

Subpart D—Enforcement

23.410 Complaints.
23.420 Wage and Hour Division conciliation.
23.430 Wage and Hour Division investigation.
23.440 Remedies and sanctions.

Subpart E—Administrative Proceedings

23.510 Disputes concerning contractor compliance.
23.520 Debarment proceedings.
23.530 Referral to Chief Administrative Law Judge; amendment of pleadings.
23.540 Consent findings and order.
23.550 Proceedings of the Administrative Law Judge.
23.560 Petition for review.
23.570 Administrative Review Board proceedings.
23.580 Administrator ruling.
Appendix A to Part 23—Contract Clause

Authority: 5 U.S.C. 301; section 4, E.O. 14026, 86 FR 22835; Secretary's Order 01–2014, 79 FR 77527.

Subpart A—General

§ 23.10 Purpose and scope.

(a) *Purpose.* This part contains the Department of Labor's rules relating to the administration of Executive Order 14026 (Executive Order or the Order), ''Increasing the Minimum Wage for Federal Contractors,'' and implements the enforcement provisions of the Executive Order. The Executive Order assigns responsibility for investigating potential violations of and obtaining compliance with the Executive Order to the Department of Labor.

(b) *Policy.* Executive Order 14026 states that the Federal Government's procurement interests in economy and efficiency are promoted when the Federal Government contracts with sources that adequately compensate their workers. Specifically, the Order explains that raising the minimum wage enhances worker productivity and generates higher-quality work by boosting workers' health, morale, and effort; reducing absenteeism and turnover; and lowering supervisory and training costs. Accordingly, Executive Order 14026 sets forth a general position of the Federal Government that increasing the hourly minimum wage paid by Federal contractors to $15.00 beginning January 30, 2022, (with future annual increases based on inflation) will lead to improved economy and efficiency in Federal procurement. The Order provides that executive departments and agencies, including independent establishments subject to the Federal Property and Administrative Services Act, shall, to the extent permitted by law, ensure that new covered contracts, contract-like instruments, and solicitations (collectively referred to as ''contracts'') include a clause, which the contractor and any covered subcontractors shall incorporate into lower-tier subcontracts, specifying, as a condition of payment, that the minimum wage to be paid to workers, including workers whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(c), performing work on or in connection with the contract or any covered subcontract thereunder, shall be at least:

(1) $15.00 per hour beginning January 30, 2022; and

(2) Beginning January 1, 2023, and annually thereafter, an amount determined by the Secretary of Labor (the Secretary) pursuant to the Order. Nothing in Executive Order 14026 or this part shall excuse noncompliance with any applicable Federal or state prevailing wage law or any applicable law or municipal ordinance establishing a minimum wage higher than the minimum wage established under the Order.

(c) *Scope.* Neither Executive Order 14026 nor this part creates or changes any rights under the Contract Disputes Act, 41 U.S.C. 7101 *et seq.,* or any private right of action that may exist under other applicable laws. The Executive Order provides that disputes regarding whether a contractor has paid the minimum wages prescribed by the Order, to the extent permitted by law, shall be disposed of only as provided by the Secretary in regulations issued under the Order. However, nothing in the Order or this part is intended to limit or preclude a civil action under the False Claims Act, 31 U.S.C. 3730, or criminal prosecution under 18 U.S.C. 1001. The Order similarly does not preclude judicial review of final decisions by the Secretary in accordance with the Administrative Procedure Act, 5 U.S.C. 701 *et seq.*

§ 23.20 Definitions.

For purposes of this part:

Administrative Review Board (ARB or Board) means the Administrative Review Board, U.S. Department of Labor.

Administrator means the Administrator of the Wage and Hour Division and includes any official of the Wage and Hour Division authorized to perform any of the functions of the Administrator under this part.

Agency head means the Secretary, Attorney General, Administrator, Governor, Chairperson, or other chief official of an executive agency, unless otherwise indicated, including any deputy or assistant chief official of an executive agency or any persons authorized to act on behalf of the agency head.

Concessions contract or *contract for concessions* means a contract under which the Federal Government grants a right to use Federal property, including land or facilities, for furnishing services. The term *concessions contract* includes but is not limited to a contract the principal purpose of which is to furnish food, lodging, automobile fuel, souvenirs, newspaper stands, and/or recreational equipment, regardless of whether the services are of direct benefit to the Government, its personnel, or the general public.

Contract or *contract-like instrument* means an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law. This definition includes, but is not limited to, a mutually binding legal relationship obligating one party to furnish services (including construction) and another party to pay for them. The term *contract* includes all contracts and any subcontracts of any tier thereunder, whether negotiated or advertised, including any procurement actions, lease agreements, cooperative agreements, provider agreements, intergovernmental service agreements, service agreements, licenses, permits, or any other type of agreement, regardless of nomenclature, type, or particular form, and whether entered into verbally or in writing. The term *contract* shall be interpreted broadly as to include, but not be limited to, any contract within the definition provided in the Federal Acquisition Regulation (FAR) at 48 CFR chapter 1 or applicable Federal statutes. This definition includes, but is not limited to, any contract that may be covered under any Federal procurement statute. Contracts may be the result of competitive bidding or awarded to a single source under applicable authority to do so. In addition to bilateral instruments, contracts include, but are not limited to, awards and notices of awards; job orders or task letters issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; exercised contract options; and bilateral contract modifications. The term *contract* includes contracts covered by the Service Contract Act, contracts covered by the Davis-Bacon Act, concessions contracts not otherwise subject to the Service Contract Act, and contracts in connection with Federal property or land and related to offering services for Federal employees, their dependents, or the general public.

Contracting officer means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. This term includes certain authorized representatives of the contracting officer acting within the limits of their authority as delegated by the contracting officer.

Contractor means any individual or other legal entity that is awarded a Federal Government contract or subcontract under a Federal Government contract. The term *contractor* refers to both a prime contractor and all of its subcontractors of any tier on a contract with the Federal Government. The term *contractor* includes lessors and lessees, as well as employers of workers performing on or in connection with covered Federal contracts whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(c). The term *employer* is used interchangeably with the terms *contractor* and *subcontractor* in various sections of this part. The U.S. Government, its agencies, and instrumentalities are not contractors, subcontractors, employers, or joint employers for purposes of compliance with the provisions of the Executive Order.

Davis-Bacon Act means the Davis-Bacon Act of 1931, as amended, 40 U.S.C. 3141 *et seq.,* and the implementing regulations in this chapter.

Executive departments and agencies means executive departments, military departments, or any independent establishments within the meaning of 5 U.S.C. 101, 102, and 104(1), respectively, and any wholly owned Government corporation within the meaning of 31 U.S.C. 9101.

Executive Order 13658 means Executive Order 13658 of February 12, 2014, ''Establishing a Minimum Wage for Contractors,'' 3 CFR, 2014 Comp., p. 219, and its implementing regulations at 29 CFR part 10.

Executive Order 14026 minimum wage means a wage that is at least:

(1) $15.00 per hour beginning January 30, 2022; and

(2) Beginning January 1, 2023, and annually thereafter, an amount determined by the Secretary pursuant to section 2 of the Executive Order.

Fair Labor Standards Act (FLSA) means the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 201 *et seq.,* and the implementing regulations in this title.

Federal Government means an agency or instrumentality of the United States that enters into a contract pursuant to authority derived from the Constitution or the laws of the United States. For purposes of the Executive Order and this part, this definition does not include the District of Columbia or any Territory or possession of the United States.

New contract means a contract that is entered into on or after January 30, 2022, or a contract that is renewed or extended (pursuant to an exercised option or otherwise) on or after January 30, 2022. For purposes of the Executive Order, a contract that is entered into prior to January 30, 2022 will constitute a *new contract* if, on or after January 30, 2022:

(1) The contract is renewed;

(2) The contract is extended; or

(3) An option on the contract is exercised.

Office of Administrative Law Judges means the Office of Administrative Law Judges, U.S. Department of Labor.

Option means a unilateral right in a contract by which, for a specified time, the Government may elect to purchase additional supplies or services called for by the contract, or may elect to extend the term of the contract.

Procurement contract for construction means a procurement contract for the construction, alteration, or repair (including painting and decorating) of public buildings or public works and which requires or involves the employment of mechanics or laborers, and any subcontract of any tier thereunder. The term *procurement contract for construction* includes any contract subject to the provisions of the Davis-Bacon Act, as amended, and the implementing regulations in this chapter.

Procurement contract for services means a procurement contract the principal purpose of which is to furnish services in the United States through the use of service employees, and any subcontract of any tier thereunder. The term *procurement contract for services* includes any contract subject to the provisions of the Service Contract Act, as amended, and the implementing regulations in this chapter.

Service Contract Act means the McNamara-O'Hara Service Contract Act of 1965, as amended, 41 U.S.C. 6701 *et seq.,* and the implementing regulations in this chapter.

Solicitation means any request to submit offers, bids, or quotations to the Federal Government.

Tipped employee means any employee engaged in an occupation in which the employee customarily and regularly receives more than $30 a month in tips. For purposes of the Executive Order, a worker performing on or in connection with a contract covered by the Executive Order who meets this definition is a tipped employee.

United States means the United States and all executive departments, independent establishments, administrative agencies, and instrumentalities of the United States, including corporations of which all or substantially all of the stock is owned by the United States, by the foregoing departments, establishments, agencies, instrumentalities, and including nonappropriated fund instrumentalities. When used in a geographic sense, the *United States* means the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf lands as defined in the Outer Continental Shelf Lands Act, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, Wake Island, and Johnston Island.

Wage and Hour Division means the Wage and Hour Division, U.S. Department of Labor.

Wage determination includes any determination of minimum hourly wage rates or fringe benefits made by the Secretary of Labor pursuant to the provisions of the Service Contract Act or the Davis-Bacon Act. This term includes the original determination and any subsequent determinations modifying, superseding, correcting, or otherwise changing the provisions of the original determination.

Worker means any person engaged in performing work on or in connection with a contract covered by the Executive Order, and whose wages under such contract are governed by the Fair Labor Standards Act, the Service Contract Act, or the Davis-Bacon Act, other than individuals employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in 29 CFR part 541, regardless of the contractual relationship alleged to exist between the individual and the employer. The term *worker* includes workers performing on or in connection with a covered contract whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(c), as well as any person working on or in connection with a covered contract and individually registered in a bona fide apprenticeship or training program registered with the U.S. Department of Labor's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship. A worker performs ''on'' a contract if the worker directly performs the specific services called for by the contract. A worker

performs ''in connection with'' a contract if the worker's work activities are necessary to the performance of a contract but are not the specific services called for by the contract.

§ 23.30 Coverage.

(a) This part applies to any new contract, as defined in § 23.20, with the Federal Government, unless excluded by § 23.40, provided that:

(1)(i) It is a procurement contract for construction covered by the Davis-Bacon Act;

(ii) It is a contract for services covered by the Service Contract Act;

(iii) It is a contract for concessions, including any concessions contract excluded from coverage under the Service Contract Act by Department of Labor regulations at 29 CFR 4.133(b); or

(iv) It is a contract entered into with the Federal Government in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public; and

(2) The wages of workers under such contract are governed by the Fair Labor Standards Act, the Service Contract Act, or the Davis-Bacon Act.

(b) For contracts covered by the Service Contract Act or the Davis-Bacon Act, this part applies to prime contracts only at the thresholds specified in those statutes. For procurement contracts where workers' wages are governed by the Fair Labor Standards Act, this part applies when the prime contract exceeds the micro-purchase threshold, as defined in 41 U.S.C. 1902(a).

(c) This part only applies to contracts with the Federal Government requiring performance in whole or in part within the United States, which when used in a geographic sense in this part means the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf lands as defined in the Outer Continental Shelf Lands Act, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, Wake Island, and Johnston Island. If a contract with the Federal Government is to be performed in part within and in part outside the United States and is otherwise covered by the Executive Order and this part, the minimum wage requirements of the Order and this part would apply with respect to that part of the contract that is performed within the United States.

(d) This part does not apply to contracts for the manufacturing or furnishing of materials, supplies, articles, or equipment to the Federal Government, including those that are subject to the Walsh-Healey Public Contracts Act, 41 U.S.C. 6501 *et seq.*

§ 23.40 Exclusions.

(a) *Grants.* The requirements of this part do not apply to grants within the meaning of the Federal Grant and Cooperative Agreement Act, as amended, 31 U.S.C. 6301 *et seq.*

(b) *Contracts or agreements with Indian Tribes.* This part does not apply to contracts or agreements with Indian Tribes under the Indian Self-Determination and Education Assistance Act, as amended, 25 U.S.C. 5301 *et seq.*

(c) *Procurement contracts for construction that are excluded from coverage of the Davis-Bacon Act.* Procurement contracts for construction that are not covered by the Davis-Bacon Act are not subject to this part.

(d) *Contracts for services that are exempted from coverage under the Service Contract Act.* Service contracts, except for those expressly covered by § 23.30(a)(1)(iii) or (iv), that are exempt from coverage of the Service Contract Act pursuant to its statutory language at 41 U.S.C. 6702(b) or its implementing regulations, including those at 29 CFR 4.115 through 4.122 and 29 CFR 4.123(d) and (e), are not subject to this part.

(e) *Employees who are exempt from the minimum wage requirements of the Fair Labor Standards Act under 29 U.S.C. 213(a) and 214(a)–(b).* Except for workers who are otherwise covered by the Davis-Bacon Act or the Service Contract Act, this part does not apply to employees who are not entitled to the minimum wage set forth at 29 U.S.C. 206(a)(1) of the Fair Labor Standards Act pursuant to 29 U.S.C. 213(a) and 214(a)–(b). Pursuant to the exclusion in this paragraph (e), individuals that are not subject to the requirements of this part include but are not limited to:

(1) *Learners, apprentices, or messengers.* This part does not apply to learners, apprentices, or messengers whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(a).

(2) *Students.* This part does not apply to student workers whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(b).

(3) *Individuals employed in a bona fide executive, administrative, or professional capacity.* This part does not apply to workers who are employed by Federal contractors in a bona fide executive, administrative, or professional capacity, as those terms are defined and delimited in 29 CFR part 541.

(f) *FLSA-covered workers performing in connection with covered contracts for less than 20 percent of their work hours in a given workweek.* This part does not apply to FLSA-covered workers performing in connection with covered contracts, *i.e.,* those workers who perform work duties necessary to the performance of the contract but who are not directly engaged in performing the specific work called for by the contract, that spend less than 20 percent of their hours worked in a particular workweek performing in connection with such contracts. The exclusion in this paragraph (f) is inapplicable to covered workers performing on covered contracts, *i.e.,* those workers directly engaged in performing the specific work called for by the contract.

(g) *Contracts that result from a solicitation issued before January 30, 2022, and that are entered into on or between January 30, 2022 and March 30, 2022.* This part does not apply to contracts that result from a solicitation issued prior to January 30, 2022 and that are entered into on or between January 30, 2022 and March 30, 2022. However, if such a contract is subsequently extended or renewed, or an option is subsequently exercised under that contract, the Executive Order and this part shall apply to that extension, renewal, or option.

§ 23.50 Minimum wage for Federal contractors and subcontractors.

(a) *General.* Pursuant to Executive Order 14026, the minimum hourly wage rate required to be paid to workers performing on or in connection with covered contracts with the Federal Government is at least:

(1) $15.00 per hour beginning January 30, 2022; and

(2) Beginning January 1, 2023, and annually thereafter, an amount determined by the Secretary pursuant to section 2 of Executive Order 14026. In accordance with section 2 of the Order, the Secretary will determine the applicable minimum wage rate to be paid to workers performing on or in connection with covered contracts on an annual basis beginning at least 90 days before any new minimum wage is to take effect.

(b) *Method for determining the applicable Executive Order minimum wage for workers.* The minimum wage to be paid to workers, including workers whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(c), in the performance of a covered contract shall be at least:

(1) $15.00 per hour beginning January 30, 2022; and

(2) An amount determined by the Secretary, beginning January 1, 2023, and annually thereafter. The applicable

minimum wage determined for each calendar year by the Secretary shall be:

(i) Not less than the amount in effect on the date of such determination;

(ii) Increased from such amount by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (United States city average, all items, not seasonally adjusted), or its successor publication, as determined by the Bureau of Labor Statistics; and

(iii) Rounded to the nearest multiple of $0.05. In calculating the annual percentage increase in the Consumer Price Index for purposes of this section, the Secretary shall compare such Consumer Price Index for the most recent year available with the Consumer Price Index for the preceding year.

(c) *Relation to other laws.* Nothing in the Executive Order or this part shall excuse noncompliance with any applicable Federal or state prevailing wage law or any applicable law or municipal ordinance, or any applicable contract, establishing a minimum wage higher than the minimum wage established under the Executive Order and this part.

(d) *Relation to Executive Order 13658.* As of January 30, 2022, Executive Order 13658 is superseded to the extent that it is inconsistent with Executive Order 14026 and this part. Unless otherwise excluded by § 23.40, workers performing on or in connection with a covered new contract, as defined in § 23.20, must be paid at least the minimum hourly wage rate established by Executive Order 14026 and this part rather than the lower hourly minimum wage rate established by Executive Order 13658 and its implementing regulations in 29 CFR part 10.

§ 23.60 Antiretaliation.

It shall be unlawful for any person to discharge or in any other manner discriminate against any worker because such worker has filed any complaint or instituted or caused to be instituted any proceeding under or related to Executive Order 14026 or this part, or has testified or is about to testify in any such proceeding.

§ 23.70 Waiver of rights.

Workers cannot waive, nor may contractors induce workers to waive, their rights under Executive Order 14026 or this part.

§ 23.80 Severability.

If any provision of this part is held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, or stayed pending further agency action, the provision shall be construed so as to continue to give the maximum effect to the provision permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event the provision shall be severable from this part and shall not affect the remainder thereof.

Subpart B—Federal Government Requirements

§ 23.110 Contracting agency requirements.

(a) *Contract clause.* The contracting agency shall include the Executive Order minimum wage contract clause set forth in Appendix A of this part in all covered contracts and solicitations for such contracts, as described in § 23.30, except for procurement contracts subject to the FAR. The required contract clause directs, as a condition of payment, that all workers performing work on or in connection with covered contracts must be paid the applicable, currently effective minimum wage under Executive Order 14026 and § 23.50. For procurement contracts subject to the FAR, contracting agencies must use the clause set forth in the FAR developed to implement this section. Such clause will accomplish the same purposes as the clause set forth in Appendix A of this part and be consistent with the requirements set forth in this section.

(b) *Failure to include the contract clause.* Where the Department or the contracting agency discovers or determines, whether before or subsequent to a contract award, that a contracting agency made an erroneous determination that Executive Order 14026 or this part did not apply to a particular contract and/or failed to include the applicable contract clause in a contract to which the Executive Order applies, the contracting agency, on its own initiative or within 15 calendar days of notification by an authorized representative of the Department of Labor, shall incorporate the contract clause in the contract retroactive to commencement of performance under the contract through the exercise of any and all authority that may be needed (including, where necessary, its authority to negotiate or amend, its authority to pay any necessary additional costs, and its authority under any contract provision authorizing changes, cancellation and termination).

(c) *Withholding.* A contracting officer shall upon his or her own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the prime contractor under the covered contract or any other Federal contract with the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay workers the full amount of wages required by the Executive Order. In the event of failure to pay any covered workers all or part of the wages due under Executive Order 14026, the agency may, after authorization or by direction of the Department of Labor and written notification to the contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of Executive Order 14026 may be grounds for termination of the right to proceed with the contract work. In such event, the contracting agency may enter into other contracts or arrangements for completion of the work, charging the contractor in default with any additional cost.

(d) *Actions on complaints*—(1) *Reporting*—(i) *Reporting time frame.* The contracting agency shall forward all information listed in paragraph (d)(1)(ii) of this section to the Division of Government Contracts Enforcement, Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210 within 14 calendar days of receipt of a complaint alleging contractor noncompliance with the Executive Order or this part or within 14 calendar days of being contacted by the Wage and Hour Division regarding any such complaint.

(ii) *Report contents.* The contracting agency shall forward to the Division of Government Contracts Enforcement, Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210 any:

(A) Complaint of contractor noncompliance with Executive Order 14026 or this part;

(B) Available statements by the worker, contractor, or any other person regarding the alleged violation;

(C) Evidence that the Executive Order minimum wage contract clause was included in the contract;

(D) Information concerning known settlement negotiations between the parties, if applicable; and

(E) Any other relevant facts known to the contracting agency or other information requested by the Wage and Hour Division.

(2) [Reserved]

§ 23.120 Department of Labor requirements.

(a) *In general.* The Executive Order minimum wage applicable from January 30, 2022 through December 31, 2022, is $15.00 per hour. The Secretary will

determine the applicable minimum wage rate to be paid to workers performing work on or in connection with covered contracts on an annual basis, beginning January 1, 2023.

(b) *Method for determining the applicable Executive Order minimum wage.* The Secretary will determine the applicable minimum wage under the Executive Order, beginning January 1, 2023, by using the methodology set forth in § 23.50(b).

(c) *Notice*—(1) *Timing of notification.* The Administrator will notify the public of the applicable minimum wage rate to be paid to workers performing work on or in connection with covered contracts on an annual basis at least 90 days before any new minimum wage is to take effect.

(2) *Method of notification*—(i) ***Federal Register***. The Administrator will publish a notice in the **Federal Register** stating the applicable minimum wage rate to be paid to workers performing work on or in connection with covered contracts on an annual basis at least 90 days before any new minimum wage is to take effect.

(ii) *Website.* The Administrator will publish and maintain on *https://alpha.sam.gov/content/wage-determinations,* or any successor site, the applicable minimum wage rate to be paid to workers performing work on or in connection with covered contracts.

(iii) *Wage determinations.* The Administrator will publish a prominent general notice on all wage determinations issued under the Davis-Bacon Act and the Service Contract Act stating the Executive Order minimum wage and that the Executive Order minimum wage applies to all workers performing on or in connection with such contracts whose wages are governed by the Fair Labor Standards Act, the Davis-Bacon Act, and the Service Contract Act. The Administrator will update this general notice on all such wage determinations annually.

(iv) *Other means as appropriate.* The Administrator may publish the applicable minimum wage rate to be paid to workers performing work on or in connection with covered contracts on an annual basis at least 90 days before any such new minimum wage is to take effect in any other media that the Administrator deems appropriate.

(d) *Notification to a contractor of the withholding of funds.* If the Administrator requests that a contracting agency withhold funds from a contractor pursuant to § 23.110(c), the Administrator and/or contracting agency shall notify the affected prime contractor of the Administrator's withholding request to the contracting agency.

Subpart C—Contractor Requirements

§ 23.210 Contract clause.

(a) *Contract clause.* The contractor, as a condition of payment, shall abide by the terms of the applicable Executive Order minimum wage contract clause referred to in § 23.110(a).

(b) *Flow-down requirement.* The contractor and any subcontractors shall include in any covered subcontracts the Executive Order minimum wage contract clause referred to in § 23.110(a) and shall require, as a condition of payment, that the subcontractor include the minimum wage contract clause in any lower-tier subcontracts. The prime contractor and any upper-tier contractor shall be responsible for the compliance by any subcontractor or lower-tier subcontractor with the Executive Order minimum wage requirements, whether or not the contract clause was included in the subcontract.

§ 23.220 Rate of pay.

(a) *General.* The contractor must pay each worker performing work on or in connection with a covered contract no less than the applicable Executive Order minimum wage for all hours worked on or in connection with the covered contract, unless such worker is exempt under § 23.40. In determining whether a worker is performing within the scope of a covered contract, all workers who are engaged in working on or in connection with the contract, either in performing the specific services called for by its terms or in performing other duties necessary to the performance of the contract, are thus subject to the Executive Order and this part unless a specific exemption is applicable. Nothing in the Executive Order or this part shall excuse noncompliance with any applicable Federal or state prevailing wage law or any applicable law or municipal ordinance establishing a minimum wage higher than the minimum wage established under Executive Order 14026.

(b) *Workers who receive fringe benefits.* The contractor may not discharge any part of its minimum wage obligation under the Executive Order by furnishing fringe benefits or, with respect to workers whose wages are governed by the Service Contract Act, the cash equivalent thereof.

(c) *Tipped employees.* The contractor may satisfy the wage payment obligation to a tipped employee under the Executive Order through a combination of an hourly cash wage and a credit based on tips received by such employee pursuant to the provisions in § 23.280.

§ 23.230 Deductions.

The contractor may make deductions that reduce a worker's wages below the Executive Order minimum wage rate only if such deduction qualifies as a:

(a) Deduction required by Federal, state, or local law, such as Federal or state withholding of income taxes;

(b) Deduction for payments made to third parties pursuant to court order;

(c) Deduction directed by a voluntary assignment of the worker or his or her authorized representative; or

(d) Deduction for the reasonable cost or fair value, as determined by the Administrator, of furnishing such worker with ''board, lodging, or other facilities,'' as defined in 29 U.S.C. 203(m)(1) and part 531 of this title.

§ 23.240 Overtime payments.

(a) *General.* The Fair Labor Standards Act and the Contract Work Hours and Safety Standards Act require overtime payment of not less than one and one-half times the regular rate of pay or basic rate of pay for all hours worked over 40 hours in a workweek to covered workers. The regular rate of pay under the Fair Labor Standards Act is generally determined by dividing the worker's total earnings in any workweek by the total number of hours actually worked by the worker in that workweek for which such compensation was paid.

(b) *Tipped employees.* When overtime is worked by tipped employees who are entitled to overtime pay under the Fair Labor Standards Act and/or the Contract Work Hours and Safety Standards Act, the employees' regular rate of pay includes both the cash wages paid by the employer (*see* §§ 23.220(a) and 23.280(a)(1)) and the amount of any tip credit taken (*see* § 23.280(a)(2)). (*See* part 778 of this title for a detailed discussion of overtime compensation under the Fair Labor Standards Act.) Any tips received by the employee in excess of the tip credit are not included in the regular rate.

§ 23.250 Frequency of pay.

Wage payments to workers shall be made no later than one pay period following the end of the regular pay period in which such wages were earned or accrued. A pay period under Executive Order 14026 may not be of any duration longer than semi-monthly.

§ 23.260 Records to be kept by contractors.

(a) *Records.* The contractor and each subcontractor performing work subject to Executive Order 14026 shall make and maintain, for three years, records

containing the information specified in paragraphs (a)(1) through (6) of this section for each worker and shall make them available for inspection and transcription by authorized representatives of the Wage and Hour Division of the U.S. Department of Labor:

(1) Name, address, and social security number of each worker;

(2) The worker's occupation(s) or classification(s);

(3) The rate or rates of wages paid;

(4) The number of daily and weekly hours worked by each worker;

(5) Any deductions made; and

(6) The total wages paid.

(b) *Interviews.* The contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with workers at the worksite during normal working hours.

(c) *Other recordkeeping obligations.* Nothing in this part limits or otherwise modifies the contractor's recordkeeping obligations, if any, under the Davis-Bacon Act, the Service Contract Act, or the Fair Labor Standards Act, or their implementing regulations in this title.

§ 23.270 Anti-kickback.

All wages paid to workers performing on or in connection with covered contracts must be paid free and clear and without subsequent deduction (except as set forth in § 23.230), rebate, or kickback on any account. Kickbacks directly or indirectly to the employer or to another person for the employer's benefit for the whole or part of the wage are prohibited.

§ 23.280 Tipped employees.

(a) *Payment of wages to tipped employees.* With respect to workers who are tipped employees as defined in § 23.20 and this section, the amount of wages paid to such employee by the employee's employer shall be equal to:

(1) An hourly cash wage of at least:

(i) $10.50 an hour beginning on January 30, 2022;

(ii) Beginning January 1, 2023, 85 percent of the wage in effect under section 2 of the Executive Order, rounded to the nearest multiple of $0.05;

(iii) Beginning January 1, 2024, and for each subsequent year, 100 percent of the wage in effect under section 2 of the Executive Order; and

(2) An additional amount on account of the tips received by such employee (tip credit) which amount is equal to the difference between the hourly cash wage in paragraph (a)(1) of this section and the wage in effect under section 2 of the Executive Order. Where tipped employees do not receive a sufficient amount of tips in the workweek to equal the amount of the tip credit, the employer must increase the cash wage paid for the workweek under paragraph (a)(1) of this section so that the amount of the cash wage paid and the tips received by the employee equal the minimum wage under section 2 of the Executive Order.

(3) An employer may pay a higher cash wage than required by paragraph (a)(1) of this section and take a lower tip credit but may not pay a lower cash wage than required by paragraph (a)(1) of this section and take a greater tip credit. In order for the employer to claim a tip credit, the employer must demonstrate that the worker received at least the amount of the credit claimed in actual tips. If the worker received less than the claimed tip credit amount in tips during the workweek, the employer is required to pay the balance on the regular payday so that the worker receives the wage in effect under section 2 of the Executive Order with the defined combination of wages and tips.

(4) If the cash wage required to be paid under the Service Contract Act, 41 U.S.C. 6701 *et seq.,* or any other applicable law or regulation is higher than the wage required by section 2 of the Executive Order, the employer shall pay additional cash wages equal to the difference between the wage in effect under section 2 of the Executive Order and the highest wage required to be paid.

(b) *Requirements with respect to tipped employees.* The definitions and requirements concerning tipped employees, the tip credit, the characteristics of tips, service charges, tip pooling, and notice set forth in 29 CFR 10.28(b) through (f) apply with respect to workers who are tipped employees, as defined in § 23.20, performing on or in connection with contracts covered under Executive Order 14026, except that the minimum required cash wage shall be the minimum required cash wage described in paragraph (a)(1) of this section for the purposes of Executive 14026. For the purposes of this section, where 29 CFR 10.28(b) through (f) uses the term ''Executive Order,'' that term refers to Executive Order 14026.

§ 23.290 Notice.

(a) The contractor must notify all workers performing work on or in connection with a covered contract of the applicable minimum wage rate under the Executive Order. With respect to service employees on contracts covered by the Service Contract Act and laborers and mechanics on contracts covered by the Davis-Bacon Act, the contractor may meet the requirement in this paragraph (a) by posting, in a prominent and accessible place at the worksite, the applicable wage determination under those statutes.

(b) With respect to workers performing work on or in connection with a covered contract whose wages are governed by the FLSA, the contractor must post a notice provided by the Department of Labor in a prominent and accessible place at the worksite so it may be readily seen by workers.

(c) Contractors that customarily post notices to workers electronically may post the notice electronically, provided such electronic posting is displayed prominently on any website that is maintained by the contractor, whether external or internal, and customarily used for notices to workers about terms and conditions of employment.

Subpart D—Enforcement

§ 23.410 Complaints.

(a) *Filing a complaint.* Any worker, contractor, labor organization, trade organization, contracting agency, or other person or entity that believes a violation of the Executive Order or this part has occurred may file a complaint with any office of the Wage and Hour Division. No particular form of complaint is required. A complaint may be filed orally or in writing. The Wage and Hour Division will accept the complaint in any language.

(b) *Confidentiality.* It is the policy of the Department of Labor to protect the identity of its confidential sources and to prevent an unwarranted invasion of personal privacy. Accordingly, the identity of any individual who makes a written or oral statement as a complaint or in the course of an investigation, as well as portions of the statement which would reveal the individual's identity, shall not be disclosed in any manner to anyone other than Federal officials without the prior consent of the individual. Disclosure of such statements shall be governed by the provisions of the Freedom of Information Act (5 U.S.C. 552, *see* 29 CFR part 70) and the Privacy Act of 1974 (5 U.S.C. 552a).

§ 23.420 Wage and Hour Division conciliation.

After receipt of a complaint, the Administrator may seek to resolve the matter through conciliation.

§ 23.430 Wage and Hour Division investigation.

The Administrator may investigate possible violations of the Executive Order or this part either as the result of

a complaint or at any time on his or her own initiative. As part of the investigation, the Administrator may conduct interviews with the relevant contractor, as well as the contractor's workers at the worksite during normal work hours; inspect the relevant contractor's records (including contract documents and payrolls, if applicable); make copies and transcriptions of such records; and require the production of any documentary or other evidence the Administrator deems necessary to determine whether a violation, including conduct warranting imposition of debarment, has occurred. Federal agencies and contractors shall cooperate with any authorized representative of the Department of Labor in the inspection of records, in interviews with workers, and in all aspects of investigations.

§ 23.440 Remedies and sanctions.

(a) *Unpaid wages.* When the Administrator determines a contractor has failed to pay the applicable Executive Order minimum wage to workers, the Administrator will notify the contractor and the applicable contracting agency of the unpaid wage violation and request the contractor to remedy the violation. If the contractor does not remedy the violation of the Executive Order or this part, the Administrator shall direct the contractor to pay all unpaid wages to the affected workers in the investigative findings letter it issues pursuant to § 23.510. The Administrator may additionally direct that payments due on the contract or any other contract between the contractor and the Government be withheld as necessary to pay unpaid wages. Upon the final order of the Secretary that unpaid wages are due, the Administrator may direct the relevant contracting agency to transfer the withheld funds to the Department of Labor for disbursement.

(b) *Antiretaliation.* When the Administrator determines that any person has discharged or in any other manner discriminated against any worker because such worker filed any complaint or instituted or caused to be instituted any proceeding under or related to the Executive Order or this part, or because such worker testified or is about to testify in any such proceeding, the Administrator may provide for any relief to the worker as may be appropriate, including employment, reinstatement, promotion, and the payment of lost wages.

(c) *Debarment.* Whenever a contractor is found by the Secretary of Labor to have disregarded its obligations under the Executive Order, or this part, such contractor and its responsible officers, and any firm, corporation, partnership, or association in which the contractor or responsible officers have an interest, shall be ineligible to be awarded any contract or subcontract subject to the Executive Order for a period of up to three years from the date of publication of the name of the contractor or responsible officer on the ineligible list. Neither an order for debarment of any contractor or its responsible officers from further Government contracts nor the inclusion of a contractor or its responsible officers on a published list of noncomplying contractors under this section shall be carried out without affording the contractor or responsible officers an opportunity for a hearing before an Administrative Law Judge.

(d) *Civil action to recover greater underpayments than those withheld.* If the payments withheld under § 23.110(c) are insufficient to reimburse all workers' lost wages, or if there are no payments to withhold, the Department of Labor, following a final order of the Secretary, may bring action against the contractor in any court of competent jurisdiction to recover the remaining amount of underpayments. The Department of Labor shall, to the extent possible, pay any sums it recovers in this manner directly to the underpaid workers. Any sum not paid to a worker because of inability to do so within three years shall be transferred into the Treasury of the United States as miscellaneous receipts.

(e) *Retroactive inclusion of contract clause.* If a contracting agency fails to include the applicable contract clause in a contract to which the Executive Order applies, the contracting agency, on its own initiative or within 15 calendar days of notification by an authorized representative of the Department of Labor, shall incorporate the contract clause in the contract retroactive to commencement of performance under the contract through the exercise of any and all authority that may be needed (including, where necessary, its authority to negotiate or amend, its authority to pay any necessary additional costs, and its authority under any contract provision authorizing changes, cancellation and termination).

Subpart E—Administrative Proceedings

§ 23.510 Disputes concerning contractor compliance.

(a) This section sets forth the procedure for resolution of disputes of fact or law concerning a contractor's compliance with subpart C of this part. The procedures in this section may be initiated upon the Administrator's own motion or upon request of the contractor.

(b)(1) In the event of a dispute described in paragraph (a) of this section in which it appears that relevant facts are at issue, the Administrator will notify the affected contractor(s) and the prime contractor (if different) of the investigative findings by certified mail to the last known address.

(2) A contractor desiring a hearing concerning the Administrator's investigative findings letter shall request such a hearing by letter postmarked within 30 calendar days of the date of the Administrator's letter. The request shall set forth those findings which are in dispute with respect to the violations and/or debarment, as appropriate, and explain how the findings are in dispute, including by making reference to any affirmative defenses.

(3) Upon receipt of a timely request for a hearing, the Administrator shall refer the case to the Chief Administrative Law Judge by Order of Reference, to which shall be attached a copy of the investigative findings letter from the Administrator and response thereto, for designation to an Administrative Law Judge to conduct such hearings as may be necessary to resolve the disputed matters. The hearing shall be conducted in accordance with the procedures set forth in 29 CFR part 6.

(c)(1) In the event of a dispute described in paragraph (a) of this section in which it appears that there are no relevant facts at issue, and where there is not at that time reasonable cause to institute debarment proceedings under § 23.520, the Administrator shall notify the contractor(s) of the investigation findings by certified mail to the last known address, and shall issue a ruling in the investigative findings letter on any issues of law known to be in dispute.

(2)(i) If the contractor disagrees with the factual findings of the Administrator or believes that there are relevant facts in dispute, the contractor shall so advise the Administrator by letter postmarked within 30 calendar days of the date of the Administrator's letter. In the response, the contractor shall explain in detail the facts alleged to be in dispute and attach any supporting documentation.

(ii) Upon receipt of a timely response under paragraph (c)(2)(i) of this section alleging the existence of a factual dispute, the Administrator shall examine the information submitted. If the Administrator determines that there is a relevant issue of fact, the Administrator shall refer the case to the

Chief Administrative Law Judge in accordance with paragraph (b)(3) of this section. If the Administrator determines that there is no relevant issue of fact, the Administrator shall so rule and advise the contractor accordingly.

(3) If the contractor desires review of the ruling issued by the Administrator under paragraph (c)(1) or (c)(2)(ii) of this section, the contractor shall file a petition for review thereof with the Administrative Review Board postmarked within 30 calendar days of the date of the ruling, with a copy thereof to the Administrator. The petition for review shall be filed in accordance with the procedures set forth in 29 CFR part 7.

(d) If a timely response to the Administrator's investigative findings letter is not made or a timely petition for review is not filed, the Administrator's investigative findings letter shall become the final order of the Secretary. If a timely response or petition for review is filed, the Administrator's letter shall be inoperative unless and until the decision is upheld by the Administrative Law Judge or the Administrative Review Board, or otherwise becomes a final order of the Secretary.

§ 23.520 Debarment proceedings.

(a) Whenever any contractor is found by the Secretary of Labor to have disregarded its obligations to workers or subcontractors under Executive Order 14026 or this part, such contractor and its responsible officers, and any firm, corporation, partnership, or association in which such contractor or responsible officers have an interest, shall be ineligible for a period of up to three years to receive any contracts or subcontracts subject to Executive Order 14026 from the date of publication of the name or names of the contractor or persons on the ineligible list.

(b)(1) Whenever the Administrator finds reasonable cause to believe that a contractor has committed a violation of Executive Order 14026 or this part which constitutes a disregard of its obligations to workers or subcontractors, the Administrator shall notify by certified mail to the last known address, the contractor and its responsible officers (and any firms, corporations, partnerships, or associations in which the contractor or responsible officers are known to have an interest), of the finding. The Administrator shall afford such contractor and any other parties notified an opportunity for a hearing as to whether debarment action should be taken under Executive Order 14026 or this part. The Administrator shall furnish to those notified a summary of the investigative findings. If the contractor or any other parties notified wish to request a hearing as to whether debarment action should be taken, such a request shall be made by letter to the Administrator postmarked within 30 calendar days of the date of the investigative findings letter from the Administrator, and shall set forth any findings which are in dispute and the reasons therefor, including any affirmative defenses to be raised. Upon receipt of such timely request for a hearing, the Administrator shall refer the case to the Chief Administrative Law Judge by Order of Reference, to which shall be attached a copy of the investigative findings letter from the Administrator and the response thereto, for designation of an Administrative Law Judge to conduct such hearings as may be necessary to determine the matters in dispute.

(2) Hearings under this section shall be conducted in accordance with the procedures set forth in 29 CFR part 6. If no hearing is requested within 30 calendar days of the letter from the Administrator, the Administrator's findings shall become the final order of the Secretary.

§ 23.530 Referral to Chief Administrative Law Judge; amendment of pleadings.

(a) Upon receipt of a timely request for a hearing under § 23.510 (where the Administrator has determined that relevant facts are in dispute) or § 23.520 (debarment), the Administrator shall refer the case to the Chief Administrative Law Judge by Order of Reference, to which shall be attached a copy of the investigative findings letter from the Administrator and response thereto, for designation of an Administrative Law Judge to conduct such hearings as may be necessary to decide the disputed matters. A copy of the Order of Reference and attachments thereto shall be served upon the respondent. The investigative findings letter from the Administrator and response thereto shall be given the effect of a complaint and answer, respectively, for purposes of the administrative proceedings.

(b) At any time prior to the closing of the hearing record, the complaint (investigative findings letter) or answer (response) may be amended with the permission of the Administrative Law Judge and upon such terms as he/she may approve. For proceedings pursuant to § 23.510, such an amendment may include a statement that debarment action is warranted under § 23.520. Such amendments shall be allowed when justice and the presentation of the merits are served thereby, provided there is no prejudice to the objecting party's presentation on the merits. When issues not raised by the pleadings are reasonably within the scope of the original complaint and are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings, and such amendments may be made as necessary to make them conform to the evidence. The presiding Administrative Law Judge may, upon reasonable notice and upon such terms as are just, permit supplemental pleadings setting forth transactions, occurrences or events which have happened since the date of the pleadings and which are relevant to any of the issues involved. A continuance in the hearing may be granted or the record left open to enable the new allegations to be addressed.

§ 23.540 Consent findings and order.

(a) At any time prior to the receipt of evidence or, at the Administrative Law Judge's discretion prior to the issuance of the Administrative Law Judge's decision, the parties may enter into consent findings and an order disposing of the proceeding in whole or in part.

(b) Any agreement containing consent findings and an order disposing of a proceeding in whole or in part shall also provide:

(1) That the order shall have the same force and effect as an order made after full hearing;

(2) That the entire record on which any order may be based shall consist solely of the Administrator's findings letter and the agreement;

(3) A waiver of any further procedural steps before the Administrative Law Judge and the Administrative Review Board regarding those matters which are the subject of the agreement; and

(4) A waiver of any right to challenge or contest the validity of the findings and order entered into in accordance with the agreement.

(c) Within 30 calendar days after receipt of an agreement containing consent findings and an order disposing of the disputed matter in whole, the Administrative Law Judge shall, if satisfied with its form and substance, accept such agreement by issuing a decision based upon the agreed findings and order. If such agreement disposes of only a part of the disputed matter, a hearing shall be conducted on the matters remaining in dispute.

§ 23.550 Proceedings of the Administrative Law Judge.

(a) *General.* The Office of Administrative Law Judges has jurisdiction to hear and decide appeals

concerning questions of law and fact from the Administrator's investigative findings letters issued under §§ 23.510 and 23.520. Any party may, when requesting an appeal or during the pendency of a proceeding on appeal, timely move an Administrative Law Judge to consolidate a proceeding initiated hereunder with a proceeding initiated under the Service Contract Act or the Davis-Bacon Act.

(b) *Proposed findings of fact, conclusions, and order.* Within 20 calendar days of filing of the transcript of the testimony or such additional time as the Administrative Law Judge may allow, each party may file with the Administrative Law Judge proposed findings of fact, conclusions of law, and a proposed order, together with a supporting brief expressing the reasons for such proposals. Each party shall serve such proposals and brief on all other parties.

(c) *Decision.* (1) Within a reasonable period of time after the time allowed for filing of proposed findings of fact, conclusions of law, and order, or within 30 calendar days of receipt of an agreement containing consent findings and order disposing of the disputed matter in whole, the Administrative Law Judge shall issue a decision. The decision shall contain appropriate findings, conclusions, and an order, and be served upon all parties to the proceeding.

(2) If the respondent is found to have violated Executive Order 14026 or this part, and if the Administrator requested debarment, the Administrative Law Judge shall issue an order as to whether the respondent is to be subject to the ineligible list, including findings that the contractor disregarded its obligations to workers or subcontractors under the Executive Order or this part.

(d) *Limit on scope of review.* The Equal Access to Justice Act, as amended, does not apply to proceedings under this part. Accordingly, Administrative Law Judges shall have no authority to award attorney's fees and/or other litigation expenses pursuant to the provisions of the Equal Access to Justice Act for any proceeding under this part.

(e) *Orders.* If the Administrative Law Judge concludes a violation occurred, the final order shall mandate action to remedy the violation, including, but not limited to, monetary relief for unpaid wages. Where the Administrator has sought imposition of debarment, the Administrative Law Judge shall determine whether an order imposing debarment is appropriate.

(f) *Finality.* The Administrative Law Judge's decision shall become the final order of the Secretary, unless a timely petition for review is filed with the Administrative Review Board.

§ 23.560 Petition for review.

(a) *Filing a petition for review.* Within 30 calendar days after the date of the decision of the Administrative Law Judge (or such additional time as is granted by the Administrative Review Board), any party aggrieved thereby who desires review thereof shall file a petition for review of the decision with supporting reasons. Such party shall transmit the petition in writing to the Administrative Review Board with a copy thereof to the Chief Administrative Law Judge. The petition shall refer to the specific findings of fact, conclusions of law, or order at issue. A petition concerning the decision on debarment shall also state the disregard of obligations to workers and/or subcontractors, or lack thereof, as appropriate. A party must serve the petition for review, and all briefs, on all parties and the Chief Administrative Law Judge. It must also timely serve copies of the petition and all briefs on the Administrator, Wage and Hour Division, and on the Associate Solicitor, Division of Fair Labor Standards, Office of the Solicitor, U.S. Department of Labor, Washington, DC 20210.

(b) *Effect of filing.* If a party files a timely petition for review, the Administrative Law Judge's decision shall be inoperative unless and until the Administrative Review Board issues an order affirming the letter or decision, or the letter or decision otherwise becomes a final order of the Secretary. If a petition for review concerns only the imposition of debarment, however, the remainder of the decision shall be effective immediately. No judicial review shall be available unless a timely petition for review to the Administrative Review Board is first filed.

§ 23.570 Administrative Review Board proceedings.

(a) *Authority*—(1) *General.* The Administrative Review Board has jurisdiction to hear and decide in its discretion appeals concerning questions of law and fact from investigative findings letters of the Administrator issued under § 23.510(c)(1) or (2), Administrator's rulings issued under § 23.580, and decisions of Administrative Law Judges issued under § 23.550.

(2) *Limit on scope of review.* (i) The Board shall not have jurisdiction to pass on the validity of any provision of this part. The Board is an appellate body and shall decide cases properly before it on the basis of substantial evidence contained in the entire record before it. The Board shall not receive new evidence into the record.

(ii) The Equal Access to Justice Act, as amended, does not apply to proceedings under this part. Accordingly, the Administrative Review Board shall have no authority to award attorney's fees and/or other litigation expenses pursuant to the provisions of the Equal Access to Justice Act for any proceeding under this part.

(b) *Decisions.* The Board's final decision shall be issued within a reasonable period of time following receipt of the petition for review and shall be served upon all parties by mail to the last known address and on the Chief Administrative Law Judge (in cases involving an appeal from an Administrative Law Judge's decision).

(c) *Orders.* If the Board concludes a violation occurred, the final order shall mandate action to remedy the violation, including, but not limited to, monetary relief for unpaid wages. Where the Administrator has sought imposition of debarment, the Board shall determine whether an order imposing debarment is appropriate. The Board's order is subject to discretionary review by the Secretary as provided in Secretary's Order 01–2020 (or any successor to that order).

(d) *Finality.* The decision of the Administrative Review Board shall become the final order of the Secretary in accordance with Secretary's Order 01–2020 (or any successor to that order), which provides for discretionary review of such orders by the Secretary.

§ 23.580 Administrator ruling.

(a) Questions regarding the application and interpretation of the rules contained in this part may be referred to the Administrator, who shall issue an appropriate ruling. Requests for such rulings should be addressed to the Administrator, Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210.

(b) Any interested party may appeal to the Administrative Review Board for review of a final ruling of the Administrator issued under paragraph (a) of this section. The petition for review shall be filed with the Administrative Review Board within 30 calendar days of the date of the ruling.

Appendix A to Part 23—Contract Clause

The following clause shall be included by the contracting agency in every contract, contract-like instrument, and solicitation to which Executive Order 14026 applies, except for procurement contracts subject to the Federal Acquisition Regulation (FAR):

(a) *Executive Order 14026.* This contract is subject to Executive Order 14026, the

regulations issued by the Secretary of Labor in 29 CFR part 23 pursuant to the Executive Order, and the following provisions.

(b) *Minimum wages.* (1) Each worker (as defined in 29 CFR 23.20) engaged in the performance of this contract by the prime contractor or any subcontractor, regardless of any contractual relationship which may be alleged to exist between the contractor and worker, shall be paid not less than the applicable minimum wage under Executive Order 14026.

(2) The minimum wage required to be paid to each worker performing work on or in connection with this contract between January 30, 2022 and December 31, 2022, shall be $15.00 per hour. The minimum wage shall be adjusted each time the Secretary of Labor's annual determination of the applicable minimum wage under section 2(a)(ii) of Executive Order 14026 results in a higher minimum wage. Adjustments to the Executive Order minimum wage under section 2(a)(ii) of Executive Order 14026 will be effective for all workers subject to the Executive Order beginning January 1 of the following year. If appropriate, the contracting officer, or other agency official overseeing this contract shall ensure the contractor is compensated only for the increase in labor costs resulting from the annual inflation increases in the Executive Order 14026 minimum wage beginning on January 1, 2023. The Secretary of Labor will publish annual determinations in the **Federal Register** no later than 90 days before such new wage is to take effect. The Secretary will also publish the applicable minimum wage on *https://alpha.sam.gov/content/wage-determinations* (or any successor website). The applicable published minimum wage is incorporated by reference into this contract.

(3) The contractor shall pay unconditionally to each worker all wages due free and clear and without subsequent deduction (except as otherwise provided by 29 CFR 23.230), rebate, or kickback on any account. Such payments shall be made no later than one pay period following the end of the regular pay period in which such wages were earned or accrued. A pay period under this Executive Order may not be of any duration longer than semi-monthly.

(4) The prime contractor and any upper-tier subcontractor shall be responsible for the compliance by any subcontractor or lower-tier subcontractor with the Executive Order minimum wage requirements. In the event of any violation of the minimum wage obligation of this clause, the contractor and any subcontractor(s) responsible therefore shall be liable for the unpaid wages.

(5) If the commensurate wage rate paid to a worker performing work on or in connection with a covered contract whose wages are calculated pursuant to a special certificate issued under 29 U.S.C. 214(c), whether hourly or piece rate, is less than the Executive Order minimum wage, the contractor must pay the Executive Order minimum wage rate to achieve compliance with the Order. If the commensurate wage due under the certificate is greater than the Executive Order minimum wage, the contractor must pay the worker the greater commensurate wage.

(c) *Withholding.* The agency head shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the prime contractor under this or any other Federal contract with the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay workers the full amount of wages required by Executive Order 14026.

(d) *Contract suspension/Contract termination/Contractor debarment.* In the event of a failure to pay any worker all or part of the wages due under Executive Order 14026 or 29 CFR part 23, or a failure to comply with any other term or condition of Executive Order 14026 or 29 CFR part 23, the contracting agency may on its own action or after authorization or by direction of the Department of Labor and written notification to the contractor, take action to cause suspension of any further payment, advance or guarantee of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the contractor in default with any additional cost. A breach of the contract clause may be grounds for debarment as a contractor and subcontractor as provided in 29 CFR 23.520.

(e) *Workers who receive fringe benefits.* The contractor may not discharge any part of its minimum wage obligation under Executive Order 14026 by furnishing fringe benefits or, with respect to workers whose wages are governed by the Service Contract Act, the cash equivalent thereof.

(f) *Relation to other laws.* Nothing herein shall relieve the contractor of any other obligation under Federal, state or local law, or under contract, for the payment of a higher wage to any worker, nor shall a lower prevailing wage under any such Federal, State, or local law, or under contract, entitle a contractor to pay less than $15.00 (or the minimum wage as established each January thereafter) to any worker.

(g) *Payroll records.* (1) The contractor shall make and maintain for three years records containing the information specified in paragraphs (g)(1)(i) through (vi) of this section for each worker and shall make the records available for inspection and transcription by authorized representatives of the Wage and Hour Division of the U.S. Department of Labor:

(i) Name, address, and social security number;

(ii) The worker's occupation(s) or classification(s);

(iii) The rate or rates of wages paid;

(iv) The number of daily and weekly hours worked by each worker;

(v) Any deductions made; and

(vi) Total wages paid.

(2) The contractor shall also make available a copy of the contract, as applicable, for inspection or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or to make available such records for inspection and transcription shall be a violation of 29 CFR part 23 and this contract, and in the case of failure to produce such records, the contracting officer, upon direction of an authorized representative of the Department of Labor, or under its own action, shall take such action as may be necessary to cause suspension of any further payment or advance of funds until such time as the violations are discontinued.

(4) The contractor shall permit authorized representatives of the Wage and Hour Division to conduct investigations, including interviewing workers at the worksite during normal working hours.

(5) Nothing in this clause limits or otherwise modifies the contractor's payroll and recordkeeping obligations, if any, under the Davis-Bacon Act, as amended, and its implementing regulations; the Service Contract Act, as amended, and its implementing regulations; the Fair Labor Standards Act, as amended, and its implementing regulations; or any other applicable law.

(h) *Flow-down requirement.* The contractor (as defined in 29 CFR 23.20) shall insert this clause in all of its covered subcontracts and shall require its subcontractors to include this clause in any covered lower-tier subcontracts. Executive Order 14026 does not apply to subcontracts for the manufacturing or furnishing of materials, supplies, articles, or equipment, and this clause is not required to be inserted in such subcontracts. The prime contractor and any upper-tier subcontractor shall be responsible for the compliance by any subcontractor or lower-tier subcontractor with this contract clause.

(i) *Certification of eligibility.* (1) By entering into this contract, the contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed pursuant to section 5 of the Service Contract Act, section 3(a) of the Davis-Bacon Act, or 29 CFR 5.12(a)(1).

(2) No part of this contract shall be subcontracted to any person or firm whose name appears on the list of persons or firms ineligible to receive Federal contracts.

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(j) *Tipped employees.* In paying wages to a tipped employee as defined in section 3(t) of the Fair Labor Standards Act, 29 U.S.C. 203(t), the contractor may take a partial credit against the wage payment obligation (tip credit) to the extent permitted under section 3(a) of Executive Order 14026. In order to take such a tip credit, the employee must receive an amount of tips at least equal to the amount of the credit taken; where the tipped employee does not receive sufficient tips to equal the amount of the tip credit the contractor must increase the cash wage paid for the workweek so that the amount of cash wage paid and the tips received by the employee equal the applicable minimum wage under Executive Order 14026. To utilize this proviso:

(1) The employer must inform the tipped employee in advance of the use of the tip credit;

(2) The employer must inform the tipped employee of the amount of cash wage that will be paid and the additional amount by which the employee's wages will be considered increased on account of the tip credit;

(3) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received); and

(4) The employer must be able to show by records that the tipped employee receives at least the applicable Executive Order minimum wage through the combination of direct wages and tip credit.

(k) *Antiretaliation.* It shall be unlawful for any person to discharge or in any other manner discriminate against any worker because such worker has filed any complaint or instituted or caused to be instituted any proceeding under or related to Executive Order 14026 or 29 CFR part 23, or has testified or is about to testify in any such proceeding.

(l) *Disputes concerning labor standards.* Disputes related to the application of Executive Order 14026 to this contract shall not be subject to the general disputes clause of the contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR part 23. Disputes within the meaning of this contract clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the workers or their representatives.

(m) *Notice.* The contractor must notify all workers performing work on or in connection with a covered contract of the applicable minimum wage rate under the Executive Order. With respect to service employees on contracts covered by the Service Contract Act and laborers and mechanics on contracts covered by the Davis-Bacon Act, the contractor may meet this requirement by posting, in a prominent and accessible place at the worksite, the applicable wage determination under those statutes. With respect to workers performing work on or in connection with a covered contract whose wages are governed by the FLSA, the contractor must post a notice provided by the Department of Labor in a prominent and accessible place at the worksite so it may be readily seen by workers. Contractors that customarily post notices to workers electronically may post the notice electronically provided such electronic posting is displayed prominently on any website that is maintained by the contractor, whether external or internal, and customarily used for notices to workers about terms and conditions of employment.

Signed in Washington, DC, this 16th day of November, 2021.

Jessica Looman,

Acting Administrator, Wage and Hour Division.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix—Increasing the Minimum Wage for Federal Contractors

BILLING CODE 4510–27–P

WORKER RIGHTS
UNDER EXECUTIVE ORDER 14026

FEDERAL MINIMUM WAGE FOR CONTRACTORS

$15.00 PER HOUR

EFFECTIVE JANUARY 30, 2022 – DECEMBER 31, 2022

The law requires certain federal contractors to display this poster where employees can easily see it.

MINIMUM WAGE

Executive Order 14026 (EO) requires that federal contractors pay workers performing work on or in connection with covered contracts at least (1) $15.00 per hour beginning January 30, 2022, and (2) beginning January 1, 2023, and every year thereafter, an inflation-adjusted amount determined by the Secretary of Labor in accordance with the EO and appropriate regulations. The EO hourly minimum wage in effect from January 30, 2022 through December 31, 2022 is $15.00.

TIPS

Covered tipped employees must be paid a cash wage of at least $10.50 per hour effective January 30, 2022 through December 31, 2022. If a worker's tips combined with the required cash wage of at least $10.50 per hour paid by the contractor do not equal the EO hourly minimum wage for contractors, the contractor must increase the cash wage paid to make up the difference. Certain other conditions must also be met.

EXCLUSIONS

- The EO minimum wage may not apply to some workers who provide support "in connection with" covered contracts for less than 20 percent of their hours worked in a week.
- The EO minimum wage may not apply to certain other occupations and workers.

ENFORCEMENT

The U.S. Department of Labor's Wage and Hour Division (WHD) is responsible for enforcing this law. WHD can answer questions about your workplace rights and protections, investigate employers, and recover back wages. All WHD services are free and confidential. Employers cannot retaliate or discriminate against someone who files a complaint or participates in an investigation. WHD will accept a complaint in any language. You can find your nearest WHD office at *www.dol.gov/whd/local* or by calling toll-free 1-866-4US-WAGE (1-866-487-9243). We do not ask workers about their immigration status. **We can help**.

ADDITIONAL INFORMATION

- The EO applies only to new federal construction and service contracts, as defined by the Secretary in the regulations at 29 CFR part 23.
- Workers with disabilities whose wages are governed by special certificates issued under section 14(c) of the Fair Labor Standards Act must also receive no less than the full EO minimum wage rate.
- Some state or local laws may provide greater worker protections; employers must comply with both.
- More information about the EO is available at: *www.dol.gov/agencies/whd/government-contracts/eo14026*

WHD
WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

1-866-487-9243
TTY: 1-877-889-5627
www.dol.gov/agencies/whd

WH1091 REV 11/21

[FR Doc. 2021–25317 Filed 11–23–21; 8:45 am]
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Part III

National Credit Union Administration

The NCUA Staff Draft 2022–2023 Budget Justification; Notice

NATIONAL CREDIT UNION ADMINISTRATION

[NCUA–2021–0149]

The NCUA Staff Draft 2022–2023 Budget Justification

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice.

SUMMARY: The NCUA's draft, ''detailed business-type budget'' is being made available for public review as required by federal statute. The proposed resources will finance the agency's annual operations and capital projects, both of which are necessary for the agency to accomplish its mission. The briefing schedule and comment instructions are included in the **SUPPLEMENTARY INFORMATION** section.

DATES: Requests to deliver a statement at the budget briefing must be received on or before November 30, 2021. Written statements and presentations for those scheduled to appear at the budget briefing must be received on or before 5 p.m. Eastern, December 3, 2021.

Written comments without public presentation at the budget briefing may be submitted by December 9, 2021.

ADDRESSES: You may submit comments by any of the following methods (*Please send comments by one method only*):

- *Presentation at public budget briefing:* Submit requests to deliver a statement at the briefing to *BudgetBriefing@ncua.gov* by November 30, 2021. Include your name, title, affiliation, mailing address, email address, and telephone number. Copies of your presentation must be submitted to the same email address by 5 p.m. Eastern, December 3, 2021.
- *Written comments:* Submit comments by December 9, 2021, through the Federal eRulemaking Portal: *http://www.regulations.gov.* The docket number is NCUA–2021–0149. Follow the instructions for submitting comments.
- Copies of the NCUA Draft 2022–2023 Budget Justification and associated materials are also available on the NCUA website at *https://www.ncua.gov/About/Pages/budget-strategic-planning/supplementary-materials.aspx.*

FOR FURTHER INFORMATION CONTACT: Eugene H. Schied, Chief Financial Officer, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428 or telephone: (703) 518–6571.

SUPPLEMENTARY INFORMATION: The following itemized list details the documents attached to this notice and made available for public review:

I. The NCUA Budget in Brief
II. Introduction and Strategic Context
III. Forecast and Enterprise Challenges
IV. Key Themes of the 2022–2023 Budget
V. Operating Budget
VI. Capital Budget
VII. Share Insurance Fund Administrative Budget
VIII. Financing the NCUA Programs
IX. Appendix A: Supplemental Budget Information
X. Appendix B: Capital Projects

Section 212 of the Economic Growth, Regulatory Relief, and Consumer Protection Act amended 12 U.S.C. 1789(b)(1)(A) to require the NCUA Board (Board) to ''make publicly available and publish in the **Federal Register** a draft of the detailed business-type budget.'' Although 12 U.S.C. 1789(b)(1)(A) requires publication of a ''business-type budget'' only for the agency operations arising under the Federal Credit Union Act's subchapter on insurance activities, in the interest of transparency the Board is providing the agency's entire staff draft 2022–2023 Budget Justification (draft budget) in this Notice.

The draft budget details the resources required to support NCUA's mission. The draft budget includes personnel and dollar estimates for three major budget components: (1) The Operating Budget; (2) the Capital Budget; and (3) the Share Insurance Fund Administrative Budget. The resources proposed in the draft budget will be used to carry out the agency's annual operations.

The NCUA staff will present its draft budget to the Board at a budget briefing open to the public and scheduled for Wednesday, December 8, 2021 at 2:00 p.m. Eastern. Due to the COVID–19 pandemic, the budget briefing will be open to the public via live webcast only. Visit the agency's homepage (*www.ncua.gov*) to access the provided webcast link.

If you wish to participate in the briefing and deliver a statement, you must email a request to *BudgetBriefing@ncua.gov* by November 30, 2021. Your request must include your name, title, affiliation, mailing address, email address, and telephone number. The NCUA will work to accommodate as many public statements as possible at the December 7, 2021 budget briefing. The Board Secretary will inform you if you have been approved to make a presentation and how much time you will be allotted. A written copy of your presentation must be delivered to the Board Secretary via email at *BudgetBriefing@ncua.gov* by 5 p.m. Eastern, December 3, 2021.

Written comments on the draft budget will also be accepted by December 9, 2021, through the Federal eRulemaking Portal: *http://www.regulations.gov.* The docket number is NCUA–2021–0149. Commenters should follow the portal instructions for submitting comments.

All comments should provide specific, actionable recommendations rather than general remarks. The Board will review and consider any comments from the public prior to approving the budget.

By the National Credit Union Administration Board on November 17, 2021.

Melane Conyers-Ausbrooks,

Secretary of the Board.

I. The NCUA Budget in Brief

Proposed 2022 and 2023 Budgets

The National Credit Union Administration's (NCUA) *2018–2022 Strategic Plan* sets forth the agency's goals and objectives that form the basis for determining resource needs and allocations. The annual budget provides the resources to execute the strategic plan, to implement important initiatives, and to undertake the NCUA's major programs: Examination and supervision, insurance, credit union development, consumer financial protection, and asset management.

2022–2023 NCUA BUDGET RESOURCES

Budget	2021 Board Approved Budget	2022 Requested Budget	Change (2021–2022)	Change Percent (2021–2022)	2023 Requested Budget	Change (2022–2023)	Change Percent (2022–2023)	2022 FTE*	2023 FTE*	FTE Change
Operating Budget	$ 314,560,000	$ 326,004,000	$ 11,444,000	3.6%	$ 369,322,000	$ 43,318,000	13.3%	1,242	1,250	8
Capital Budget	$ 18,845,000	$ 13,069,000	$ (5,776,000)	-30.7%	$ 13,069,000	$ -	0.0%	-	-	-
Share Insurance Fund Admin. Budget	$ 7,973,000	$ 6,246,000	$ (1,727,000)	-21.7%	$ 4,770,000	$ (1,476,000)	-23.6%	-	-	-
Total	$341,378,000	$345,319,000	$ 3,941,000	1.2%	$ 387,161,000	$41,842,000	12.1%	1,242	1,250	8

** Note: 2022 and 2023 FTE levels do not incude five FTEs funded by the Central Liquidity Facility (CLF).*

The NCUA's 2022–2023 budget justification includes three separate budgets: The Operating Budget, the Capital Budget, and the National Credit Union Share Insurance Fund Administrative Budget. Combined, these three budgets total $345.3 million for 2022, which is 0.5 percent more than the initial 2022 funding level approved by the NCUA Board as part of the two-year 2021–2022 budget, and 1.2 percent higher than the comparable level funded by the Board for 2021.

Four significant factors, when combined, result in the 1.2 percent budget growth between 2021 and 2022:

1. A proposed 48 FTE net increase in permanent agency staffing compared to 2021, which will support critical areas necessary to operate as an effective federal financial regulator capable of addressing emerging issues.
2. A proposed increase of $8.6 million in travel funding for 2022 compared to 2021. Although the agency expects pandemic-related considerations will result in continued remote and offsite examinations during the first quarter of 2022, the draft budget assumes that onsite examinations and related travel will resume in the spring of 2022. The agency anticipates that travel in 2022 will occur at a lower level than in previous years due to lessons learned during the pandemic about remote work.
3. A proposed reduction to the Capital Budget of $5.8 million in 2022 compared to 2021, mainly driven by the completion of the latest phase of the Modern Examination and Risk Identification Tool (MERIT) project. In 2021, all NCUA examiners were trained to use the new MERIT system. MERIT was fully deployed to all NCUA examiners in the fall of 2021. In 2022, capital investments in Examination and Supervision Solution and Infrastructure Hosting (ESS&IH) will allow the NCUA to address rollout issues reported by the broader user base and continue to enhance MERIT and the ESS suite of applications based on user feedback.
4. A proposed decrease of $1.7 million to the Share Insurance Fund (SIF) Administrative Expenses Budget, which results from the wind down of the NCUA Guaranteed Notes (NGN) program in 2022.

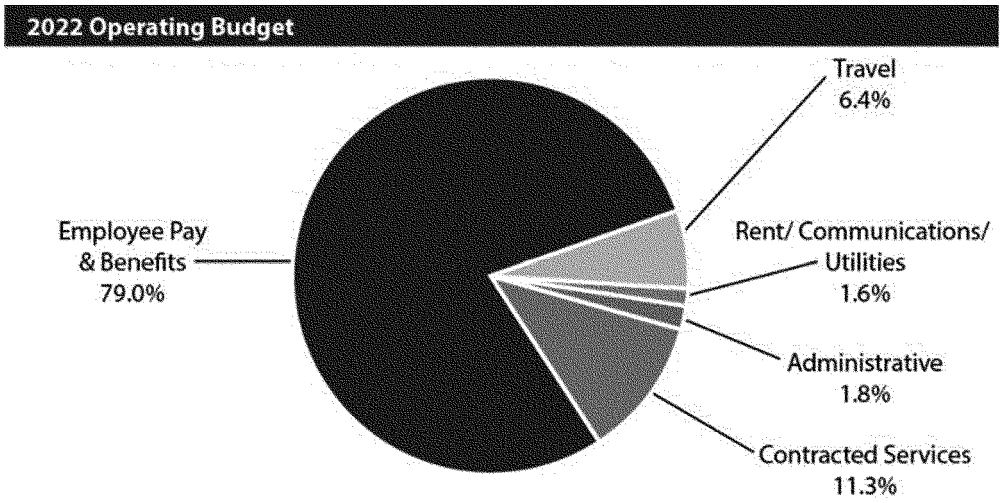
Staffing levels for 2021 and 2022 reflect the agency's current staffing requirements and proposed staffing enhancements related to agency programs and initiatives.

Operating Budget

The proposed 2022 Operating Budget is $326.0 million. Staffing levels are requested to increase by a net 48 FTEs compared to the 2021 Board-approved budget.[1]

The 2022 Operating Budget increases approximately $11.4 million, or 3.6 percent, compared to the 2021 Board-approved budget. The Operating Budget estimate for 2023 is $369.3 million and includes eight additional FTEs compared to the 2022 proposed level.

The following chart presents the major categories of spending supported by the 2022 budget, while specific adjustments to the 2021 Board-approved budget are discussed in further detail below:

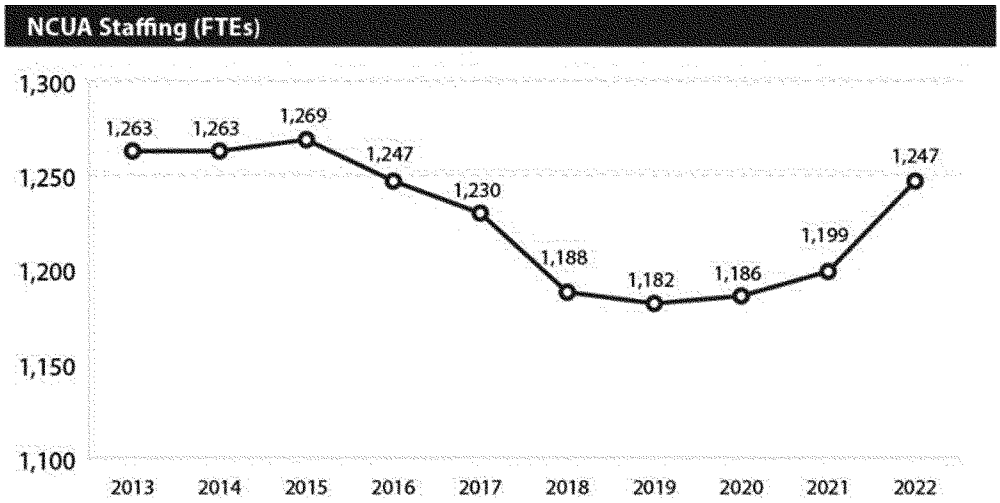


Note: Minor rounding differences may occur in totals.

Total Staffing. The Operating Budget funds 1,242 FTEs in 2022, while five additional FTEs are funded by the CLF, resulting in a net increase of 48 FTEs

[1] The published 2021 FTE level approved by the Board was 1,187 for the Operating Budget. In August 2021, the NCUA Board approved seven additional FTEs. The revised 2022 Operating Budget proposes 48 more FTEs, for a total of 1,242.

compared to the 2021 levels approved by the Board. Additional staff have been added to several offices as discussed later in this document. Since 2018 and despite significant credit union asset growth, total NCUA staffing has remained within a relatively narrow range, as shown in the chart below.



Note: Total NCUA staffing includes five FTEs funded by the Central Liquidity Facility in 2022.

Pay and Benefits. Pay and benefits increase by $16.7 million in 2022, or 6.9 percent, for a budget of $257.5 million. The increase is mainly due to the proposed staffing of critical areas necessary to operate as an effective federal financial regulator capable of addressing emerging issues. The 2022 budget recommends 48 new FTEs, which includes 29 new regional FTEs to support expanded examination criteria for federal credit unions, three new regional FTEs to support expanded specialist examiners, five new FTEs for the Office of Consumer and Financial Protection (OCFP) positions to support fair lending and financial education and literacy programs, two new FTEs for the Office of Credit Union Resource Expansion (CURE) positions to support a new small credit union program initiative, and making permanent eight FTEs that are currently filled within the total NCUA staffing plan. These increases are offset by a reduction of one FTE in the Office of Examination and Insurance (E&I) and a reduction of five other FTEs by concluding the NGN program.

The remaining increase in pay and benefits—nearly $2.3 million—is the result of the Office of Personnel Management (OPM) increasing the mandatory employer contribution for the Federal Employee Retirement System (FERS). Required FERS payments to OPM increase from 17.3 percent of covered employees' salaries to 18.4 percent, a change of 110 basis points. Nearly all NCUA employees are covered by FERS, which includes a defined benefit pension funded by both employee and employer contributions.

Travel. The travel budget increases by $8.5 million in 2022, or 69.7 percent, for a budget of $20.8 million. The large increase in travel does not represent a typical annual travel adjustment because the 2021 budget was unusually low due to restricted travel during the pandemic. The 2022 requested budget assumes that pandemic-related travel reductions will continue through the first quarter of 2022 and will resume to near pre-pandemic levels later in the year. Additionally, the NCUA plans to hold more internal and external meeting events in 2022 than in the pandemic-restricted environment of 2021. A leadership and training conference is planned for the NCUA senior leaders and managers to support professional development and employee engagement. The NCUA also plans to host three outreach roundtables to support stakeholder discussions about issues affecting the credit union system.

The NCUA continues working to contain travel costs by expanding offsite examination work and using technology-driven training. In future budgets, the NCUA will determine how such adjustments to its examination approach will help mitigate growth in travel costs.

Rent, Communications, and Utilities. The budget for rent, communications, and utilities decreases by $2.0 million in 2022, or 28.2 percent, for a budget of $5.2 million. This funding pays for space-related costs, telecommunications services, data capacity contracts, and information technology network support. The decrease in 2022 is primarily due to the agency's transition to the General Services Administration (GSA)-managed Enterprise Infrastructure Solutions (EIS). EIS is the federal government's contract for enterprise telecommunications and networking solutions. By transitioning to EIS, the NCUA's annual telecommunications costs will decrease by approximately $2.2 million, as well as benefit from the comprehensive solution EIS provides to address all aspects of federal agency IT telecommunications and infrastructure requirements.

Administrative Expenses. Administrative expenses decrease by $0.2 million in 2022, or 4.0 percent, for a budget of $5.8 million. The decrease to the administrative expenses budget category largely results from lower costs for the NCUA's share of the Federal Financial Institutions Examination Council (FFIEC) costs and lower supplies, materials, and subscription costs from the ongoing use of telework in 2022.

Contracted Services. Contracted services expenses decrease by $11.6 million in 2022, or 23.9 percent, for a total budget of $36.7 million. However, $23.0 million of unspent budget amounts from prior years will be used to pay for 2022 Contracted Services expenses. Therefore, the total cost of all contracted services in 2022 is estimated to be $59.7 million, an increase of $11.4 million compared to the 2021 budget.

Contracted services funding pays for products and services acquired in the commercial marketplace and includes critical mission support services such as

information technology hardware and software support, accounting and auditing services, and specialized subject matter expertise. The majority of funding in the contracted services category supports the NCUA's robust supervision framework and includes funding for tools used to identify and resolve risk concerns such as interest rate risk, credit risk, and industry concentration risk. Further, it addresses new and evolving operational risks such as cybersecurity threats.

Capital Budget

The proposed 2022 Capital Budget is $13.1 million.

The 2022 Capital Budget is $5.8 million less than the preliminary 2022 funding level approved by the Board in December 2020, and $5.8 million less than the 2021 Board-approved budget.

The Capital Budget fully supports the NCUA's effort to modernize its IT infrastructure and applications. The 2022 budget for capital projects decreases largely because of the deployment of MERIT, the replacement for the legacy Automated Integrated Regulatory Examination System (AIRES). Capital funding for MERIT in 2022 will fund bug fixes and other modest system enhancements. Other IT investments funded in the 2022 Capital Budget include the planned deployment of new laptops on the Windows 11 platform, ongoing enhancements and upgrades to decades-old legacy systems, network servers, and systems to ensure the agency's cybersecurity posture complies with Executive Order 14208, and various hardware investments to refresh agency networks and ensure staff have the tools necessary to achieve the agency's mission. The 2022 budget includes $3.3 million for IT software development projects that will continue replacement of the NCUA's decades-old and obsolete information technology systems, and $8.3 million in other IT investments for 2022. The NCUA's facilities require $1.5 million in capital investments.

Share Insurance Fund Administrative Expenses

The proposed 2022 Share Insurance Fund Administrative budget is $6.2 million.

The 2022 Share Insurance Fund Administrative Budget is $1.5 million less than the preliminary 2022 funding level approved by the Board in December 2020, and $1.7 million less than the 2021 Board-approved budget. The decrease in the Share Insurance Fund Administrative Budget is primarily driven by the completion of the NGN program, which is expected to substantially conclude in 2022. The remaining costs are attributed to the costs associated with tools and technology used by the Office of National Examinations and Supervision (ONES) to oversee credit union-run stress testing for the largest credit unions, travel for state examiners attending NCUA-sponsored training, audit support for the Share Insurance Fund's financial statements, and certain insurance-related expenses for Asset Management and Assistance Center (AMAC) operations.

2022 Operating Budget—Use of Surplus Funds

Various public health restrictions instituted in response to the COVID–19 pandemic resulted in much lower-than-planned spending on employee travel in 2021, as the agency continued remote and offsite examinations and work. The NCUA currently estimates that the agency will end 2021 having under-spent the Board-approved budget by approximately $15.0 million, mostly due to a reduction in travel and other operating expenses. Approximately $14.0 million in surplus budget from 2020 is also projected to remain available at the end of the year.

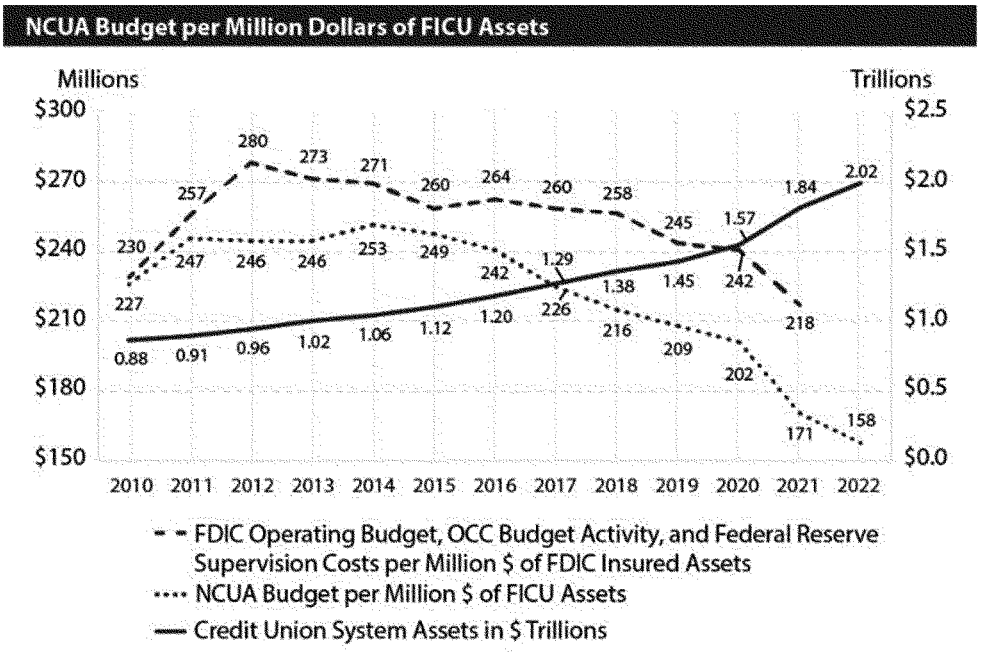
The NCUA's response to the coronavirus pandemic led to a number of unplanned and unbudgeted expenses, particularly for new requirements for cybersecurity, employee relocations, human capital support, and executive briefings and analysis support. In September 2021, the NCUA Board reallocated $4.0 million of the projected surplus for the following purposes:

- *Cybersecurity Support*: $906,780 was approved to implement cybersecurity requirements in 2021 for the NCUA's systems, services, and information holdings.
- *Employee Relocations:* $939,686 was approved for expected employee relocation costs in 2021.
- *Human Capital Analytical Support:* $550,000 was approved for analysis of the NCUA's compensation plans and for support analytic and consultative work about the NCUA's diversity, equity, and inclusion programs and practices.
- *Executive Briefings and Analysis:* $40,000 was approved for new executive briefings and analysis support.
- *Employees' accrued leave payout:* $1.6 million was approved for payout of employees' accrued leave in 2021.

Of the remaining surplus balances, the 2022 budget proposes using $23.0 million to offset the costs of planned contract services spending, reducing the agency's overall budget by that amount.

Budget Trends

As shown in the chart below, the relative size of the NCUA budget (dotted line) continues to decline when compared to balance sheets at federally insured credit unions (solid line).



Source: NCUA Annual Budgets, Call Reports, FDIC, OCC, and Federal Reserve financial reports
*Budget per million $ of FICU assets is calculated as the fiscal year's budget divided by the previous year's end-of-year assets (e.g. - FY2022 budget ($318.7M) / projected FICU assets as of 2021Q4 ($2.0T) = $158 of NCUA budget per $1M in FICU assets).

This trend illustrates the greater operating efficiencies the NCUA has attained in the last several years relative to the size of the credit union system. Additionally, the NCUA has improved its operating efficiencies more aggressively than other financial industry regulators (dotted line compared to dashed line).

Federal Compliance Cost

As a federal agency, the NCUA is required to devote significant resources to numerous compliance activities required by federal law, regulations, or, in some cases, Executive Orders. These requirements dictate how many of the agency's activities are implemented and the associated costs. These compliance activities affect the level of resources needed in areas such as information technology acquisitions and management, human capital processes, financial management processes and reporting, privacy compliance, and physical and cyber security programs.

Financial Management

Federal law, regulations, and government-wide guidance promulgated by the Office of Management and Budget (OMB), the Government Accountability Office (GAO), and the Department of the Treasury place numerous requirements on federal agencies, including the NCUA, regarding the management of public funds. Government-wide financial management compliance requirements include: Financial statement audits, improper payments, prompt payments, internal controls, and procurement audits, enterprise risk management, strategic planning, and public reporting of financial and other information.

Information Technology (IT)

There are numerous laws, regulations, and required guidance concerning information technology used by the federal government. Many of the requirements cover IT security, such as the Federal Information Security Management Act. Other requirements cover records management, paperwork reduction, information technology acquisition, cybersecurity spending, and accessible technology and continuity.

Human Capital and Equal Opportunity

Like other federal agencies, the NCUA is subject to an array of human capital-related laws, regulations, and other mandatory guidance issued by OPM, the Equal Employment Opportunity Commission, and OMB. Human capital compliance requirements include procedures related to hiring; management engagement with public unions and collective bargaining; employee discipline and removal procedures; required training for supervisors and employees; employee work-life and benefits programs; equal employment opportunity and required diversity and inclusion programs; and storage and retention of human resource records. The NCUA is also required by law to ''maintain comparability with other federal bank regulatory agencies'' when setting employee salaries.

Security

The NCUA's security posture is driven by numerous legal and regulatory requirements covering the full range of security functions. The NCUA is required to comply with mandatory requirements for personnel security; physical security; emergency management and continuity; communications and information security; and insider threat activities. In addition to meeting specific legislative mandates, as a federal agency the NCUA is required to follow guidance from, but not limited to, the Office of the Director of National Intelligence, the Department of Defense, OPM, and the Federal Emergency Management Agency.

General Compliance Activities

The NCUA also has other general compliance activities that cut across numerous offices. For example, the NCUA expends resources complying with the Privacy Act; Government in the Sunshine Act; multiple laws and regulations related to government ethics standards; and various reporting and other requirements set forth by the Federal Credit Union Act and other statutes.

Federal retirement costs are an example of mandatory payments to other federal agencies. As discussed earlier in this document, the cost of mandatory contributions to OPM for most NCUA employees' retirement system will increase from 17.3 to 18.4 percent of their salaries, based on the OPM Board of Actuaries of the Civil Service Retirement System recommendations. The budget impact of these additional retirement costs in 2022 is an increase of approximately $3.4 million over 2021.

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2022 Budget in Brief: Summary Table

(dollars in millions)	Budget	Change from 2021 Budget	% Change*	Description
2022 Operating Budget	**$326.0**	**↑ $11.4**	**+ 3.6%**	The 2022 budget provides the resources required to achieve the agency's mission.
Total Staffing (FTE)**	**1,247**	**↑ 48**	**+ 4.0%**	The 2021 FTE level increases by 48 positions from 1,199 authorized by the Board in 2021.
Budget Category				
Pay & Benefits	**$257.5**	**↑ $16.7**	**+ 6.9%**	The pay and benefits adjustment includes the proposed staffing of 48 new FTEs for critical areas necessary to operate as an effective federal financial regulator capable of addressing emerging issues. Additionally, the increase in pay and benefits includes the merit and locality pay changes required by the Collective Bargaining Agreement and $3.4 million in mandatory employer contributions for retirement.
Travel	**$20.8**	**↑ $8.5**	**+ 69.7%**	The travel budget increases by $8.5 million in 2022 compared to 2021. During 2021, travel was restricted due to the pandemic and, therefore, the 2021 budget was unusually low.
Rent, Communications, & Utilities	**$5.2**	**↓ $2.0**	**- 27.8%**	Rent, communications, and utilities budgets maintain essential working space, telecommunications, data capacity, and network support. This budget decreases due to savings from the NCUA's transition to the federal government's contract for enterprise telecommunications and networking solutions.
Administrative	**$5.8**	**↓ $0.2**	**- 3.3%**	Administrative expenses primarily support operational requirements, FFIEC fees, relocation expenses, and employee supplies. This budget decreases because ongoing telework is expected to lower administrative costs in 2022.
Contracted Services	**$36.7**	**↓ $11.6**	**- 24.0%**	Contracted services reflect costs incurred when products and services are acquired in the commercial marketplace and include critical mission support services such as information technology hardware and software development support, accounting and auditing services, and specialized subject matter expertise.

* Percent change is based on exact amounts shown below.

** The published 2021 FTE level approved by the Board was 1,192. In September 2021, the NCUA Board approved seven additional FTEs for a total authorized FTE of 1,199. Staffing levels for 2021, 2022, and 2023 include five FTEs funded by the CLF.

2023 Budget in Brief: Summary Table

(dollars in millions)	Budget	Change from 2022 Budget	% Change *	Description
2023 Operating Budget	**$369.3**	**↑ $43.3**	**+ 13.3%**	The 2023 budget provides the resources required to achieve the agency's mission.
Total Staffing (FTE)	**1,255**	**↑ 8**	**+ 0.6%**	The 2023 FTE level increases by eight positions from 1,247 recommended in 2022.
Budget Category				
Pay & Benefits	**$273.6**	**↑ $16.1**	**+ 6.3%**	Pay and benefits costs are projected to increase in 2023 to pay for the costs of new staff hired in 2022 and 2023.
Travel	**$24.4**	**↑ $3.6**	**+ 17.5%**	Travel costs in 2023 reflect a full year of travel spending without pandemic-related restrictions and support for a national training conference.
Rent, Communications, & Utilities	**$5.4**	**↑ $0.2**	**+ 3.9%**	Rent, communications, and utilities costs are projected to increase in 2023. The increase is mostly associated with the planned national training conference.
Administrative	**$6.0**	**↑ $0.2**	**+ 3.9%**	Administrative expenses support operational requirements, FFIEC fees, relocation expenses, and employee supplies.
Contracted Services	**$59.9**	**↑ $23.1**	**+ 63.0%**	Contracted services reflect costs incurred for products and services acquired in the commercial marketplace. The increase reflects that surplus funds used to offset 2022 contract costs will not be available in 2023.

* Percent change is based on exact amounts shown below.

II. Introduction and Strategic Context

History

For more than 100 years, credit unions have provided financial services to their members in the United States. Credit unions are unique depository institutions created not for profit, but to serve their members as credit cooperatives.

President Franklin Roosevelt signed the Federal Credit Union Act into law in 1934 during the Great Depression, enabling credit unions to be organized throughout the United States under charters approved by the federal government. The law's goal was to make credit available to Americans and promote thrift through a national system of nonprofit, cooperative credit unions. In the years since the passage of the Federal Credit Union Act, credit unions have evolved and are larger and more complex today than those first institutions. But, credit unions continue to provide needed financial services to millions of Americans.

The NCUA is the independent federal agency established in 1970 by the U.S. Congress to regulate, charter, and supervise federal credit unions. With the backing of the full faith and credit of the United States, the NCUA operates and manages the National Credit Union Share Insurance Fund, insuring the deposits of the account holders in all federal credit unions and the vast majority of state-chartered credit unions. No credit union member has ever lost a penny of deposits insured by the Share Insurance Fund.

As of June 2021, the NCUA is responsible for the regulation and supervision of 5,029 federally insured credit unions, which have approximately 127.2 million members and nearly $2 trillion in assets across all states and U.S. territories.[2]

Authority

Pursuant to the Federal Credit Union Act, authority for management of the NCUA is vested in the NCUA Board. It is the Board's responsibility to determine the resources necessary to carry out the NCUA's responsibilities under the Act.[3] The Board is authorized to expend such funds and perform such other functions or acts as it deems necessary or appropriate in accordance with the rules, regulations, or policies it establishes.[4]

Upon determination of the budgeted annual expenses for the agency's operations, the Board determines a fee schedule to assess federal credit unions. The Board gives consideration to the ability of federal credit unions to pay such a fee and the necessity of the expenses the NCUA will incur in carrying out its responsibilities in connection with federal credit unions.[5] In December 2020, the Board approved a final rule with changes to its regulation and methodology for determining the fees due from federal credit unions.[6]

Pursuant to the law, fees collected are deposited in the agency's Operating Fund at the Treasury of the United States, and those fees are expended by the Board to defray the cost of carrying out the agency's operations, including

[2] Source: The NCUA quarterly call report data, Q2 2021.

[3] *See* 12 U.S.C. 1752a(a).

[4] *See* 12 U.S.C. 1766(i)(2).

[5] *See* 12 U.S.C. 1755(a)–(b).

[6] *See https://www.govinfo.gov/content/pkg/FR-2020-12-31/pdf/2020-28490.pdf.*

the examination and supervision of federal credit unions.[7] In accordance with its authority [8] to use the Share Insurance Fund to carry out its insurance-related responsibilities, the Board approved an Overhead Transfer Rate methodology and authorized the Office of the Chief Financial Officer to transfer resources from the Share Insurance Fund to the Operating Fund to account for insurance-related expenses.

[7] *See* 12 U.S.C. 1755(d).

[8] *See* 12 U.S.C. 1783(a).

Mission, Goals, and Strategy

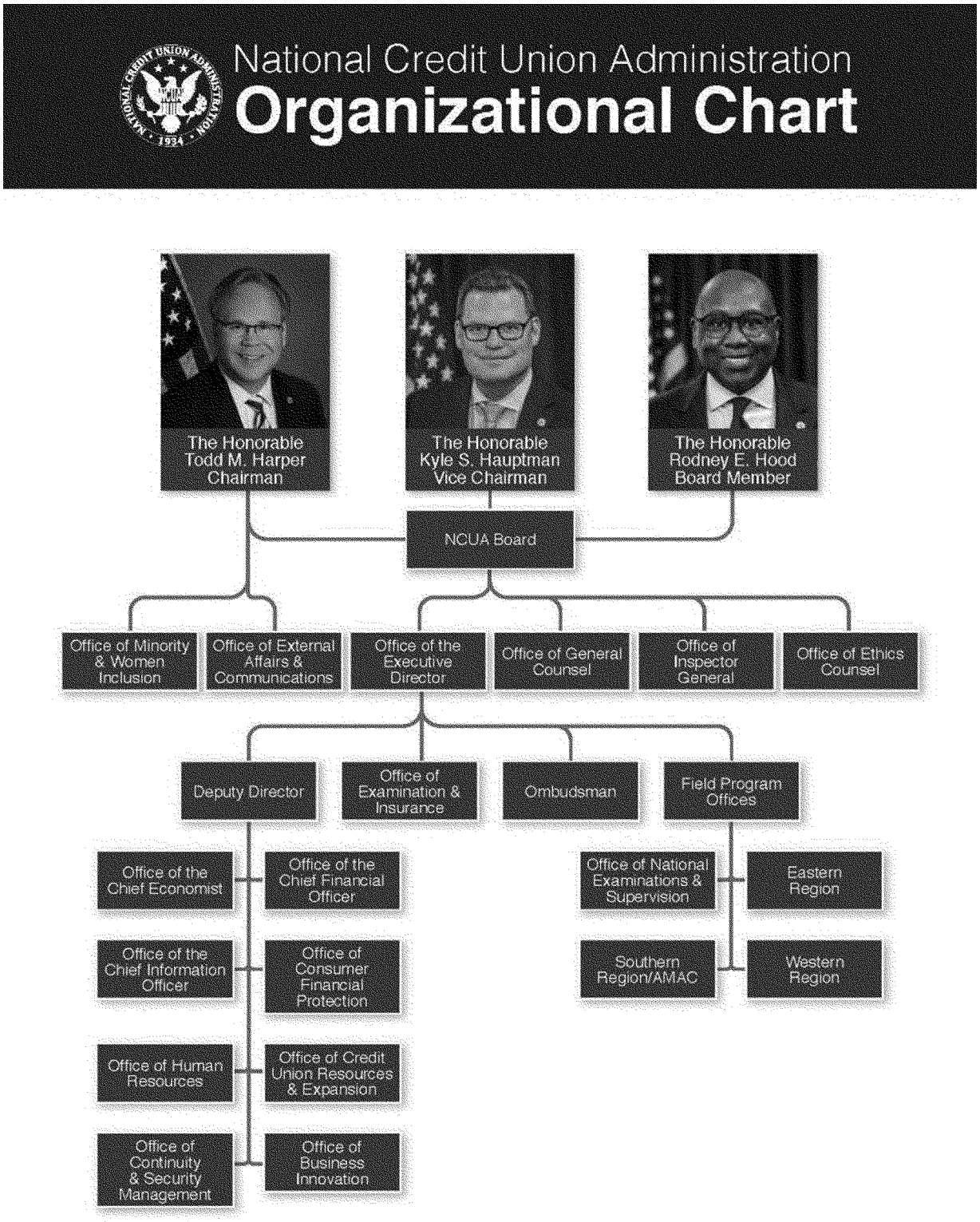
The NCUA's *2022–2026 Strategic Plan* is currently under development. The NCUA budget provides the resources necessary for the NCUA to address the agency's strategic priorities and related programs, to identify key challenges facing the credit union industry, and to leverage agency strengths to help credit unions address those challenges.

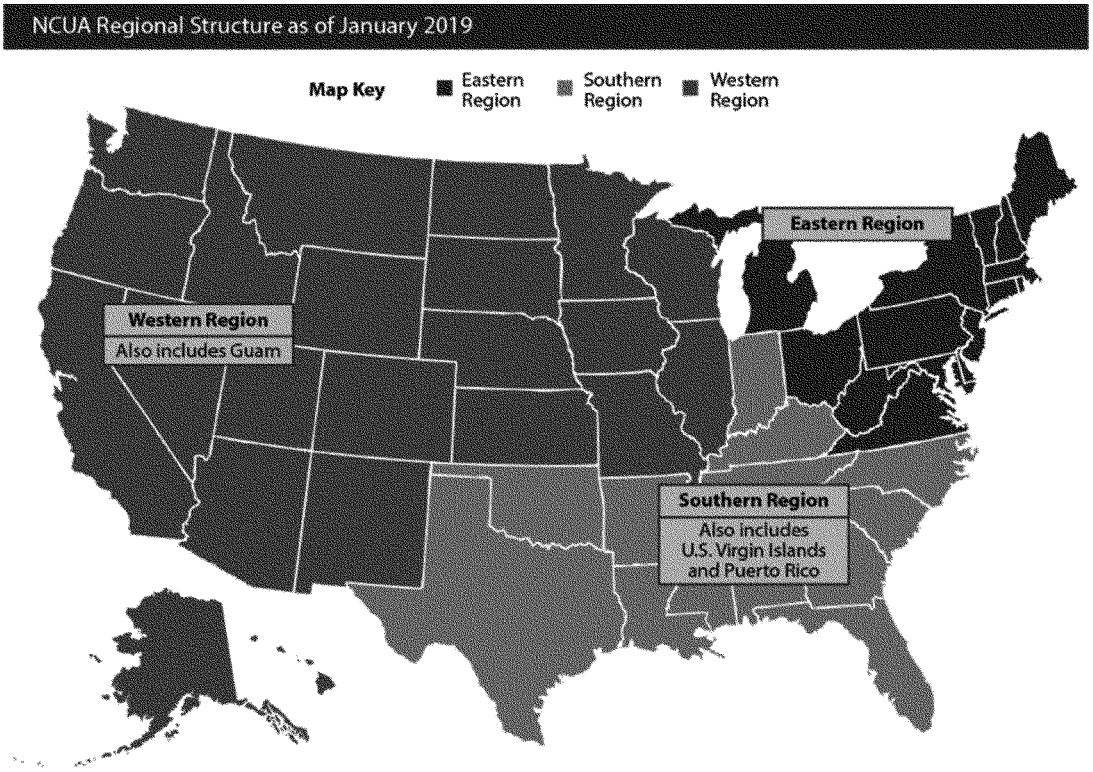
Organization, Major Agency Programs, and Workforce

The NCUA operates its headquarters in Alexandria, Virginia, to administer and oversee its major programs and support functions; its AMAC in Austin, Texas, to liquidate credit unions and recover assets; and three regional offices to carry out the agency's supervision and examination program. Reporting to these regional offices, the NCUA has credit union examiners responsible for a portfolio of credit unions covering all 50 states, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands.

The following organizational chart [9] reflects the agency's current structure, and the map shows each region's geographical alignment:

[9] The Board Secretary is an organizational component of the NCUA Board.


National Credit Union Administration
Organizational Chart
The Honorable Todd M. Harper Chairman
The Honorable Kyle S. Hauptman Vice Chairman
The Honorable Rodney E. Hood Board Member
NCUA Board
Office of Minority & Women Inclusion
Office of External Affairs & Communications
Office of the Executive Director
Office of General Counsel
Office of Inspector General
Office of Ethics Counsel
Deputy Director
Office of Examination & Insurance
Ombudsman
Field Program Offices
Office of the Chief Economist
Office of the Chief Financial Officer
Office of the Chief Information Officer
Office of Consumer Financial Protection
Office of Human Resources
Office of Credit Union Resources & Expansion
Office of Continuity & Security Management
Office of Business Innovation
Office of National Examinations & Supervision
Eastern Region
Southern Region/AMAC
Western Region



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The NCUA's regional offices carry out the agency's examination program. The NCUA uses an extended examination cycle for well-managed, low-risk federal credit unions with assets of less than $1 billion. Additionally, the NCUA's examiners perform streamlined examination procedures for financially and operationally sound credit unions with assets less than $50 million.

In addition, the ONES examines corporate credit unions and large consumer credit unions with assets over $10 billion. Consumer credit unions fall within ONES' purview based on assets reported on the first quarter call report for the preceding year. In April 2020, the NCUA Board provided regulatory relief to credit unions meeting certain asset thresholds, which were effective through year-end 2020. This asset threshold relief was subsequently extended through year-end 2021. The relief allows credit unions to use assets reported on their March 31, 2020, call report to determine applicability of certain regulations. As a result of this relief, no new large credit unions will enter ONES in 2022. ONES will continue to examine and supervise 11 consumer credit unions with 23.5 million members, accounting for $369.5 billion in credit union assets. The next effective measurement period, which will use actual assets reported, is the March 31, 2022, call report. ONES anticipates at least nine credit unions will meet or exceed the $10 billion threshold, and under existing regulations will fall within the supervisory purview of ONES beginning January 1, 2023. The staff draft budget proposes the resources necessary for examiners in the NCUA regions, in conjunction with ONES, to continue to supervise credit unions with reported assets between $10 billion and $15 billion in 2022. Any formal change to the $10 billion threshold for a consumer credit union to be supervised by ONES must be approved by the NCUA Board.

In 2022 and 2023, the agency's workforce will undertake tasks in all of the NCUA's major programs:

Supervision: The supervision program contributes to the safety and soundness of the credit union system, thereby protecting the interests of all credit union stakeholders. The NCUA's supervision is driven by identifying and resolving risk in seven primary areas:

- Interest rate risk,
- liquidity risk,
- credit risk, including asset concentration risk,
- reputation risk,
- transaction risk,
- compliance risk, and,
- strategic risk, including operational risks such as cybersecurity and fraud.

The NCUA supervises federally insured credit unions through examinations by enforcing regulations, taking administrative actions, and conserving or liquidating severely troubled institutions as needed to manage risk.

Insurance: The NCUA manages the Share Insurance Fund, which provides insurance up to at least $250,000 per individual depositor for funds held at federally insured credit unions. The Share Insurance Fund is capitalized by credit unions and through retained earnings. The equity ratio is the overall capitalization of the insurance fund to protect against unexpected losses from the failure of credit unions. The Normal Operating Level (NOL) is the desired equity level for the Share Insurance Fund. Pursuant to the Federal Credit Union Act, the NCUA Board sets the NOL between 1.20 percent and 1.50 percent.

Credit Union Development: Through chartering and field of membership services, training, and resource assistance, the NCUA supports development of small, minority, newly chartered, and low-income designated credit unions. One source of assistance is the Community Development Revolving Loan Fund, which provides loans and technical assistance grants to credit unions serving low-income members. This support results in improved access to financial services, an opportunity for increased member savings, and improved employment opportunities in low-income communities.

The NCUA charters new federal credit unions, as well as approves

modifications to existing federal charters and their fields of membership.

Consumer Financial Protection: The NCUA protects consumers through supervision and enforcement of federal consumer financial protection laws, regulations, and requirements. The NCUA also develops financial literacy tools and information for consumers and promotes financial education programs for credit unions to assist members in making more informed financial decisions.

NCUA's consumer financial protection mission goes hand-in-hand with the agency's safety and soundness mission. The agency strives to achieve a proper balance between the oversight needed to ensure consumers are protected and credit unions' ability to provide service to their member-owners. In addition, the NCUA's Consumer Assistance Center provides an avenue through which credit union members can report and resolve concerns they may have about the products and services they have received from their credit unions.

When it comes to working with credit unions, the NCUA's goal is to facilitate their safe and sound operation while ensuring they fully comply with applicable laws, including consumer financial protection and fair lending laws. Toward that end, the agency emphasizes a compliance approach over an enforcement approach. We strive to detect and resolve problems and violations in credit unions through supervision and examination procedures before they become insurmountable.

Asset Management: The NCUA conducts liquidations of failed credit unions and performs management and recovery of assets through the AMAC. This office manages and resolves assets acquired from liquidated credit unions. The AMAC provides specialized resources to the NCUA regional offices with reviews of large, complex loan portfolios and actual or potential bond claims. It also participates in the operational phases of conservatorships and records reconstruction. The AMAC seeks to minimize credit union failure costs to the Share Insurance Fund.

ACCESS (Advancing Communities through Credit, Education, Stability, and Support): The ACCESS Initiative is intended to foster financial inclusion and address the financial disparities experienced by minority, underserved, and unbanked populations. Through ACCESS, the NCUA provides resources to assist credit unions with their outreach strategies. Resources include educational webinars and the identification of grants and other financial resources to support the development and implementation of financial products and services to assist members experiencing financial hardship. The NCUA will also evaluate ways to refresh and modernize regulations, policies, and programs in support of greater financial inclusion within the credit union system.

Cross-Agency Collaboration: The NCUA also performs stakeholder outreach and is involved in numerous cross-agency initiatives. The NCUA conducts stakeholder outreach to clearly understand the needs of the credit union system. The NCUA seeks input from all of its stakeholders, including the Administration, Congress, State Supervisory Authorities, credit union members, credit unions, and their associations.

The NCUA collaborates with the other financial regulatory agencies through several financial councils. Significant councils include the Financial Stability Oversight Council, the FFIEC, and the Financial and Banking Information Infrastructure Committee. These councils and their many associated taskforces and working groups contribute to the success of the NCUA's mission by providing the agency with access to critical financial and market information and opportunities to share information on critical issues and threats to the nation's financial infrastructure, among other benefits.

Budget Process—Strategy to Budget

The NCUA's budget process starts with a review of the agency's strategic framework, including its goals and objectives. The strategic framework sets the agency's direction and guides resource requests, ensuring the agency's resources and workforce are allocated and aligned to agency priorities and initiatives.

Each regional and central office director at the NCUA develops an initial budget request identifying the resources necessary for their office to support the NCUA's mission, goals, and objectives. These budgets are developed to ensure each office's requirements are individually justified and remain consistent with the agency's overall strategic framework.

One of the primary inputs in the development process is a comprehensive workload analysis that estimates the amount of time necessary to conduct examinations and supervise federally insured credit unions in order to carry out the NCUA's dual mission as insurer and regulator. This analysis starts with a field-level review of every federally insured credit union to estimate the number of workload hours needed for the budget year. The workload estimates are then refined by regional managers and further reviewed by NCUA executive leadership for the annual budget proposal. The workload analysis accounts for the efforts of over 66 percent of the NCUA workforce and is the foundation for the budgets of the regional offices and ONES.

In addition to the workload analysis, from which central office budget staff derive related personnel and travel cost estimates, each NCUA office submits estimates for fixed and recurring expenses, such as rental payments for leased property, operations and maintenance for owned facilities or equipment, supplies, telecommunications services, major capital investments, and other administrative and contracted services costs.

Because information technology investments impact all offices within the agency, the NCUA has established an Information Technology Prioritization Council (ITPC). The ITPC meets several times each year to consider, analyze, and prioritize major information technology investments to ensure they are aligned with the NCUA's strategic framework. These focused reviews result in a mutually agreed-upon budget recommendation to support the NCUA's top short-term and long-term information technology needs and investment priorities.

Once compiled for the entire agency, all office budget submissions undergo thorough reviews by the responsible regional and central office directors, the Chief Financial Officer, and the NCUA's executive leadership. Through a series of presentations and briefings by the relevant office executives, the NCUA Executive Director formulates an agency-wide budget recommendation for consideration by the Board.

The NCUA Board has an ongoing commitment to transparency around the agency's finances and budgeting processes. As such, the Office of the Chief Financial Officer has made draft budgets available for public comment via the agency's website and solicited public comments before presenting final budget recommendations for the Board's approval. Furthermore, Section 212 of the Economic Growth, Regulatory Relief, and Consumer Protection Act, Public Law 115–174, enacted May 24, 2018, requires that the NCUA ''make publicly available and publish in the **Federal Register** a draft of the detailed business-type budget.'' To fulfill this requirement, the Board delegated to the Executive Director the authority to publish the draft budget before submitting it for Board approval. This

draft budget will appear in the **Federal Register** for public comment.

This 2022–2023 budget justification document includes comparisons to the Board approved 2021–2022 budget and includes a summary description of the major spending items in each budget category to provide transparency and promote understanding of the use of budgeted resources. Estimates are provided by major budget category, office, and cost element.

The NCUA also posts supporting documentation for its budget request on the NCUA website to assist the public in understanding its budget development process. The budget request for 2022 represents the NCUA's projections of operating and capital costs for the year and is subject to approval by the Board.

Commitment to Financial Stewardship

The NCUA funds its activities through operating fees levied on all federal credit unions and through reimbursements from the Share Insurance Fund, which is funded by both federal credit unions and federally insured state-chartered credit unions. The Overhead Transfer Rate (OTR) calculation determines the annual amount that the Share Insurance Fund reimburses the Operating Fund to pay for the NCUA's insurance-related activities. At the end of each calendar year, the NCUA's financial transactions are subject to audit in accordance with Generally Accepted Government Auditing Standards.[10]

The Board and the agency are committed to providing sound financial stewardship. In recent years, the NCUA Chief Financial Officer, with support and direction from the Executive Director and Board, has worked to improve the NCUA's financial management, financial reporting, and budget processes.

The NCUA is the only Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) agency that publishes a detailed draft budget in the **Federal Register** and solicits public comments on it at a meeting with its Board and other agency leadership. The NCUA's 2022–2023 budget justification conforms with federal budgetary concepts, which increases transparency of the agency's planned financial activity. The NCUA first revised its financial presentations for such consistency in its 2018–2019 budget.

The NCUA works diligently to maintain strong internal controls for financial transactions, in accordance with sound financial management policies and practices. Based on the results of the NCUA's assessments conducted through the course of 2020, the agency provided an unmodified Statement of Assurance (signed February 16, 2021) that its management had established and maintained effective controls to achieve the objectives of the Federal Managers Financial Integrity Act (FMFIA) and OMB Circular A–123. Specifically, the NCUA supports the internal control objectives of reporting, operations, and compliance, as well as its integration with overarching risk management activities. Within the Office of the Chief Financial Officer, the Internal Controls Assessment Team (ICAT) continues to mature the agency-wide internal control program, strengthen the overall system of internal controls, promote the importance of identifying risk, and ensure the agency has identified appropriate responses to mitigate identified risks. The agency's internal controls are designed and operated in accordance with the requirements of the Government Accountability Office's Standards for Internal Controls in the Federal Government (Green Book).

Enterprise Risk Management

The NCUA uses an Enterprise Risk Management (ERM) program to evaluate various factors arising from its operations and activities (both internal to the agency and external in the industry) that can impact the agency's performance relative to its mission, vision, and performance outcomes. Agency priority risks include both internal considerations, such as the agency's control framework, information security posture, and external factors such as credit union diversification risk. All of these risks can materially impact the agency's ability to achieve its mission.

The NCUA's ERM Council provides oversight of the agency's enterprise risk management activities. Through the ERM program, established in 2015, the agency is identifying, analyzing, and managing risks that could affect the achievement of its strategic objectives.

Overall, the NCUA's ERM program promotes effective awareness and management of risks, which, when combined with robust measurement and communication, are central to cost-effective decision-making and risk optimization within the agency. This holistic evaluation of how the agency pursues its goals and objectives is guided by the agency's appetite for risk and considers resource availability or limitations. In addition, the agency's risk appetite helps the NCUA's employees align risks with opportunities when making decisions and allocating resources to achieve the agency's strategic goals and objectives.

The NCUA first adopted its enterprise risk appetite statement in the *2018–2022 Strategic Plan.*[11] The enterprise risk appetite statement is part of the NCUA's overall management approach.

The NCUA recognizes that risk is unavoidable and sometimes inherent in carrying out the agency's mandate. The NCUA is positioned to accept greater risks in some areas than in others; however, the risk appetite establishes boundaries for the agency and its programs. Collaboration across programs and functions is a fundamental part of ensuring the agency stays within its risk appetite boundaries, and the NCUA will identify, assess, prioritize, respond to, and monitor risks to an acceptable level.

III. Forecast and Enterprise Challenges

Economic Outlook

The economic environment is a key determinant of credit union performance. Last year was one of the most challenging for the economy in U.S. history. The global pandemic and measures taken to combat the spread of COVID–19 plunged the U.S. economy into recession at the start of 2020. More than 22 million nonfarm payroll jobs were lost, and the unemployment rate increased to an 80-year high of 14.8 percent.

The federal government responded quickly, establishing loan programs for affected businesses and providing financial relief to households in the form of stimulus payments and enhanced benefit payments to unemployed workers. Federal Reserve policymakers cut short-term interest rates, increased the Federal Reserve's asset holdings, and established a number of lending programs to support the flow of credit to households, businesses, and state and local governments. Interest rates across the maturity spectrum fell to historically low levels.

Economic activity picked up considerably in mid-2020, in response to these policy measures and the relaxation of restrictions on business and consumer activity put in place by state and local governments in the early days of the pandemic. The availability of a COVID–19 vaccine also provided significant support for economic activity. By the spring of 2021 the economy had returned to its pre-recession level of output. As of September 2021, just over 17 million

[10] *See* 12 U.S.C. 1783(b) and 1789(b).

[11] *https://www.ncua.gov/files/agenda-items/AG20180125Item3b.pdf.*

jobs had been added back to nonfarm payrolls, and the unemployment rate had declined to 4.8 percent.

Credit union performance over the past year has been influenced by the pandemic and associated recession, but credit unions in the aggregate turned in a solid performance. Federally insured credit unions added 4.9 million members over the year, boosting credit union membership to 127.2 million in the second quarter of 2021. Credit union assets rose by 13.0 percent to $1.98 trillion. Total loans outstanding at federally insured credit unions increased 5.0 percent to $1.19 trillion, and the system-wide delinquency rate declined 12 basis points to a modest 46 basis points. Credit union shares and deposits increased by 15.0 percent over the year to $1.71 trillion in the second quarter of 2021, reflecting the boost to income from federal emergency relief payments to individuals and the sharp, economy-wide increase in personal savings.

The credit union system's net worth increased by 9.9 percent over the year to $201.1 billion in the second quarter of 2021. The jump in assets led to a drop in the credit union system's composite net worth ratio. However, at a composite net worth ratio of 10.17 percent, the credit union system remains very well-capitalized. The overall liquidity position of credit unions improved. Cash and short-term investments as a percentage of assets rose from 17.6 percent in the second quarter of 2020 to 18.5 percent in the second quarter of 2021, reflecting a 19 percent increase in cash and short-term investments.

The near-term outlook for the U.S. economy and credit unions is generally favorable. A consensus of forecasters [12] projects strong growth, falling unemployment, and low interest rates over the next year. Real Gross Domestic Product (GDP) is projected to grow 3.5 percent over the four quarters of 2022 following a strong 5.5 percent increase during 2021. Robust growth will continue to spur job creation, driving the unemployment rate down to 4 percent by the fourth quarter of 2022.

Inflation climbed sharply in 2021, reflecting the combination of strong demand as the economy rebounds and COVID-related supply-chain dislocations that have curtailed production and distribution and contributed to shortages of some products. Consumer price inflation was 5.4 percent over the year ending in September 2021, up sharply from levels closer to 1.75 percent during the last period of economic expansion from mid-2009 through 2019. The consensus view is that recent high inflation readings are temporary, and price pressures will ease as supply bottlenecks are resolved. Forecasters expect price growth to retreat to around 2.25 percent by mid-2022 and hold there over the next several years. These forecasts are consistent with the Federal Reserve's stated objective for inflation to ''moderately exceed 2 percent for some time'' so that inflation over time averages 2 percent.

The most recent projections prepared by Federal Reserve policymakers, published in late September 2021, indicate inflation is expected to ease in 2022 and that the Federal Reserve is likely to hold off on raising the federal funds target rate until late next year.[13] The median policymaker forecast shows the Federal Reserve's short-term policy rate rising slightly from its current range of 0 to 0.25 percent to 0.3 percent in the fourth quarter of 2022 and reaching 1.0 percent in late 2023. Analysts expect other short-term interest rates, which largely determine credit union interest payments, will remain close to their current historically low levels through the end of 2022 and move modestly higher in 2023. Longer-term rates, which largely determine the interest payments received by credit unions, are expected to edge higher as the economy strengthens.

Improving economic conditions should benefit credit unions. Strong growth and rising employment will boost household income, spending, and loan demand. Lower unemployment will bolster credit quality. Rising longer-term interest rates imply higher loan rates, and relatively low short-term interest rates will keep deposit rates in check.

Despite the favorable near-term outlook, credit unions may still face a difficult environment in the upcoming budget year. The end of forbearance programs, moratoria on evictions and foreclosures, and other COVID-related support will lead to financial stress for many households, particularly those at the bottom of the income distribution that were hit hardest by the recession. Credit union delinquency rates could begin to rise. The low interest rate environment may also pose a challenge, especially for credit unions that rely primarily on investment income.

There are also risks on the horizon that could hinder the economic recovery, affecting credit union performance. For example, the emergence of a new COVID–19 variant could exacerbate existing economic dislocations or trigger new dislocations, delaying the economy's return to more normal performance. If economic conditions weaken, the labor market recovery could stall. Under these circumstances, interest rates could remain low for an extended period of time. Alternatively, higher-than-expected inflation for a prolonged period could spur Federal Reserve policymakers to remove monetary policy accommodation earlier and more aggressively than expected, causing short-term interest rates to rise sooner than anticipated. Tighter credit conditions typically constrain consumer and business borrowing and spending and cause economic growth to slow. If short-term interest rates rise more than long-term interest rates, the yield curve will flatten, putting downward pressure on credit union net interest margins. The NCUA, like credit unions, will need to remain flexible and prepare for a variety of economic outcomes that could affect credit union performance and agency resource requirements.

Other Risk Factors and Trends

In addition to the risks associated with movements and trends in the general economy, the NCUA and credit unions will need to address increasing exposure to the risks associated with a variety of technological and structural changes. Increased concentration of loan portfolios, development of alternative loan and deposit products, technology-driven changes in the financial landscape, continued industry consolidation, and ongoing demographic changes will continue to shape the environment facing credit unions. The physical effects of climate change along with efforts to address climate change and transition to a low-carbon economy pose significant risks to the U.S. economy and the U.S. financial system.

Cybersecurity: Credit unions' use of technology exposes the credit union system to emerging cyber-enabled risk and threats. The prevalence of ransomware, malware, social engineering, business email compromise attacks, and other forms of cyber intrusion create ongoing challenges at credit unions of all sizes and will require ongoing efforts for rapid detection, protection, response, and recovery. These trends are likely to continue, and even accelerate, in the foreseeable future.

[12] Based on forecasts submitted in early October 2021 and published in *Blue Chip Economic Indicators,* October 11, 2021.

[13] Federal Open Market Committee, *Summary of Economic Projections,* September 22, 2021 (*https://www.federalreserve.gov/monetarypolicy/files/fomcprojtabl20210922.pdf*).

Lending trends: Increasing concentrations in select loan types and the introduction of new types of lending by credit unions emphasize the need for long-term risk diversification and effective risk management tools and practices, along with expertise to properly manage concentrations of risk.

Financial Landscape and Technology: Financial products that mimic deposit and loan accounts, such as mobile payment systems, pre-paid shopping cards, and peer-to-peer lending platforms, pose a competitive challenge to credit unions and banks alike. The increasing popularity and adoption of these products and services could lead to a reduction in financial intermediation. Credit unions also face a range of challenges from financial technology (fintech) companies in the areas of lending and the provision of other services. For example, underwriting and lending may be automated at a cost below levels associated with more traditional financial institutions, but may not be subject to the same safeguards that credit unions and other traditional financial institutions face. The emergence and increasing importance of digital currencies may pose both risks and opportunities for credit unions. Technological changes outside the financial sector may also lead to changes in consumer behavior that indirectly affect credit unions. COVID–19 is accelerating many of these trends, resulting in a profound reshaping of consumer behaviors.

Membership trends: While overall credit union membership continues to grow, more than half (55 percent) of federally insured credit unions had fewer members at the end of the second quarter of 2021 than a year earlier. Demographic changes are likely to lead to further declines in membership at some credit unions. All credit unions need to consider whether their product mix is consistent with their members' needs and demographic profile.

Fraud: There is increased opportunity for fraud due to challenges caused by the COVID–19 pandemic. These frauds could create additional risks to credit unions or the Share Insurance Fund.

Smaller credit unions' challenges and industry consolidation: Small credit unions face challenges to their long-term viability for a variety of reasons, including weak earnings, declining membership, high loan delinquencies, and elevated non-interest expenses. These challenges have contributed to the steady downward trend in the number of small, federally insured credit unions in operation. As of June 30, 2021, there were 2,582 small federally insured credit unions holding less than $50 million in assets −29 percent less than five years earlier.[14] Over the same period the number of federally insured credit unions with assets of at least $500 million rose 38 percent to 680. These 680 credit unions account for 79 percent of credit union members and 83 percent of credit union assets. If current consolidation trends persist, there will be fewer credit unions in operation in future years, and those that remain will be considerably larger and more complex. Large credit unions tend to offer more complex products and services. Consolidation means the risks posed by individual institutions will become more significant to the Share Insurance Fund.

Climate-related financial risks: On October 21, 2021, the Financial Stability Oversight Council (FSOC), of which NCUA is a member agency, released its Report on Climate-Related Financial Risk.[15] The report finds that ''climate change is an emerging threat to the financial stability of the United States,'' and that the number—and cost—of extreme weather and climate-related disaster events is increasing. Each year, natural disasters like hurricanes, wildfires, droughts, and floods impose a substantial financial toll on households and businesses alike. Economic and financial disruptions, and uncertainties arising from both the physical effects of climate change and efforts to transition away from carbon-intensive energy sources and industrial processes, could affect credit unions across many dimensions. For instance, disruptions in economic activity caused by climate-related weather events (*e.g.,* flooding or wildfires) may affect household income and the ability to stay current on household financial obligations in affected areas. The property damage associated with such events could affect the value of homes and any associated mortgages. The collateral value of motor vehicles may also be affected as consumers transition away from fossil fuels towards electric and hybrid automobiles. Finally, a credit union's field of membership is often tied to a specific industry, like oil refining or agriculture. The movement to renewable energy and changing weather patterns will likely impact many of these industries in the years ahead.

Credit unions will need to consider climate-related financial risks and how they could affect their membership and institutional performance. Measuring, monitoring, and mitigating climate-related financial risks presents a number of complex conceptual and practical challenges not only for credit unions but also for the NCUA. The NCUA Board will determine the appropriateness of adapting its risk monitoring framework to account for climate-related threats to financial stability, the credit union system, and the Share Insurance Fund. In 2021, the NCUA convened an internal Climate Financial Risk Working Group composed of experts from across the agency to develop in-house expertise on climate-related financial risks and evaluate whether existing regulatory tools, policies, and examination procedures are sufficient for capturing and addressing these risks.

IV. Key Themes of the 2022–2023 Budget

Overview

The staff draft 2022–2023 budget supports the agency's priorities and goals. The resources and initiatives proposed in the budget support the NCUA's mission to maintain a safe and sound credit union system.

The draft budget includes funding for the NCUA to increase permanent staffing in critical areas necessary to operate as an effective federal financial regulator capable of addressing emerging issues and responding to changes in economic conditions that may impact the credit union system. The NCUA employees are the agency's most valuable resource for achieving its mission, and the agency is committed to a workplace and a workforce with integrity, accountability, transparency, inclusivity, and proficiency. The agency will continue investing in its workforce through training and development, ensuring employees have the skills they need to do their work effectively.

The draft 2022–2023 budget proposes investments across a range of agency priorities, including:

- Additional examiner staff in the NCUA's three regions, which will enable the NCUA to address the growing complexity within the credit union system and increase annual examinations for certain credit unions;
- New program and staff resources to provide greater assistance to small credit unions;
- Additional staff dedicated to fair lending;
- Resources for the NCUA's ACCESS initiative, which is focused on improving financial inclusion;
- Expanded and ongoing efforts to ensure robust cybersecurity in the credit union system and at the agency;

[14] Note: The decrease in the number of small credit unions includes those for which asset growth resulted in exceeding the small credit union threshold at the end of the reported period.

[15] *https://home.treasury.gov/system/files/261/FSOC-Climate-Report.pdf.*

• Increased offsite examination work and use of data analytics through the Virtual Examination project; and,

• Critical investments in new information technology systems and infrastructure, including enhancements to the agency's data reporting services and MERIT.

The efficiency and effectiveness of the agency's workforce is dependent upon the resiliency of the NCUA's information technology systems and the availability of modern analytical tools. The NCUA is committed to implementing its new technology responsibly and delivering secure, reliable, and innovative solutions. The investments funded in the NCUA's Capital Budget will provide the tools and technology the workforce needs to achieve the NCUA mission.

The COVID–19 pandemic also remains a consideration for the agency's priorities and budgets for 2022 and 2023. The effects of the pandemic impact the draft budget by reducing planned travel expenses due to the shift to more remote and offsite examination and other work and by increasing information technology expenses required to support this offsite and remote work.

Examination Outlook and Virtual Examinations

Plans for the NCUA's 2022 examination program priorities are in place to incorporate updates related to regulatory considerations and revisions to some of the exam program components. The priorities for the 2022 examination program will include information security, payment systems, credit risk, the Allowance for Loan and Lease Losses account, Bank Secrecy Act (BSA) and Anti-Money Laundering (AML), internal controls, and consumer protections. The draft budget includes resources to increase the NCUA's cadre of highly-trained specialist examiners and to expand requirements for annual examinations for certain credit unions that had previously been on an extended examination cycle.

Cyberattacks pose significant risks to the financial system. Because of continued attacks on the nation's financial sector and the broader national critical infrastructure, the NCUA places credit union cybersecurity as a top supervisory priority and enterprise risk objective.

To meet these challenges, the NCUA engages in interagency cybersecurity preparedness as members of the Federal Financial Institutions Examination Council and the Financial and Banking Information Infrastructure Committee. The NCUA monitors cyber threats identified by federal and non-federal sources and shares relevant information about them with the credit union industry and financial sector partners.

In 2021 the NCUA piloted a new information security examination program. The NCUA established a working group of regional and headquarters staff to review and incorporate changes into the program to be scalable to the institution's complexity and size. The NCUA plans to provide examiner training and testing of the program for the first six months of 2022 and deploy the improved program no later than the end of the third quarter 2022.

In November 2017, the NCUA Board approved funding to explore methods to conduct more examination work offsite—referred to as the Virtual Examination project. Staff is identifying new and emerging data sources and methods to access the data, exploring advancements in analytical techniques, and considering how other technologies can be harnessed to automate or streamline various aspects of the examination process. Since March 2020, the NCUA staff has conducted the majority of its examination work while fully offsite, with only a few exceptions for the most problematic and challenging cases. The Virtual Examination project team plans to build upon this work by integrating lessons learned during the pandemic.

Effective virtual examinations will lead to greater use of standardized interaction protocols, advanced analytical capabilities, and better-informed subject matter experts. This should result in more consistent and accurate supervisory determinations, provide greater clarity and consistency with respect to how the agency conducts supervisory oversight, and reduce coordination challenges between agency and credit union staff. A full transformation involves iterative and incremental steps over several years.

Support for Small Credit Unions

Small credit unions with less than $100 million in assets are in a unique position to improve financial inclusion by offering their communities access to credit and other services. The draft budget proposes new staff and resources for the NCUA to improve the support provided to small credit unions. Such support includes efforts to better tailor regulations and supervision to the needs of small credit unions, staff training about the unique needs of small credit unions and their role serving underserved communities, expanding opportunities for small credit unions to receive support through NCUA grants, training, and other initiatives, and fostering partnerships with external organizations that can support small credit unions.

Fair Lending

The NCUA uses onsite examinations, supervision contacts, and data analysis to ensure credit unions comply with fair lending laws and regulations. The draft budget proposes staff resources to enhance the NCUA's fair lending programs and increase fair lending examinations by 50 percent and fair lending supervision contacts by 25 percent. Consumer financial protection and fair and equitable access to credit is vital to members of credit unions. These additional resources will enable the NCUA to strengthen its consumer financial protection program.

ACCESS and Financial Inclusion

At its heart, financial inclusion means expanding access to safe and affordable financial services for unbanked and underserved people and communities. The financial services industry—of which credit unions are an important part—plays a key role in helping families achieve financial freedom by building generational wealth, helping entrepreneurs to get their small businesses off the ground, and helping to create jobs and strengthen communities. The NCUA has a role to play in making sure that credit unions can support overlooked or underserved areas.

The NCUA's ACCESS initiative—Advancing Communities through Credit, Education, Stability, and Support—began by reviewing NCUA regulations, processes, and procedures to expand opportunities for greater access to savings, credit, and other financial services provided by credit unions.[16] The five initial ACCESS focus areas are:

• Chartering new credit unions;

• Field of membership;

• Low-income designation;

• Minority depository institution (MDI) preservation; and

• Consumer engagement and outreach.

For 2022, the NCUA's ACCESS initiative will build on the work done in 2021 and begin to actively engage credit union industry leaders and stakeholders to identify additional ways to help new, small, low-income designated and MDI credit unions to grow and prosper. The ACCESS initiative will also be focused on ways credit unions can help close the wealth gap, better address the financial needs of communities of color,

[16] *https://www.ncua.gov/access.*

and better appeal to the unserved and underserved.

NCUA Cybersecurity

The NCUA's approach to agency cybersecurity is founded on the National Institute of Standards and Technology's (NIST) Cybersecurity Framework (CSF), which guides and constrains how network boundaries, mobile and fixed end points (*e.g.,* an iPhone or computer), and data are provisioned, managed and protected. The CSF requirements are reinforced by *Executive Order 14208: Improving the Nation's Cybersecurity.* The draft budget bolsters the NCUA's to-date cybersecurity efforts and enables the agency to align its efforts with the requirements of the Executive Order. To effectively manage cybersecurity risk to systems, assets, data, and mission capabilities, and to prioritize efforts consistent with the NCUA's risk management strategy and business needs, the budget invests in resources and technologies to enhance several of the NCUA's CSF functional areas.

The draft budget will strengthen the NCUA's ''Identify'' functional area by making investments in asset management, governance, and risk assessment. The draft budget will strengthen the NCUA's ''Protect'' functional area by making investments in enterprise protection capabilities, automated patch management, and enterprise comply-to-connect capabilities, and by incorporating cloud-native capabilities into defensive network operations. These investments will help the NCUA further develop and implement appropriate safeguards for critical information technology infrastructure services and strengthen NCUA capabilities to limit or contain the impact of potential cybersecurity events. The draft budget will strengthen the NCUA's ''Detect'' functional area by making investments in cybersecurity situational awareness through ''big data'' analytics. Investments in both human and technology resources will help the NCUA enhance existing processes and ability to identify cybersecurity events.

Regulatory Improvements

The NCUA has undertaken a series of regulatory improvements in recent years and will continue to update and improve regulations to maintain a modern and effective regulatory framework. The NCUA website includes additional detailed information about all proposed and final rules for the past several years at: *https://www.ncua.gov/regulation-supervision/rules-regulations/proposed-pending-recently-final-regulations/.*

The NCUA's Annual Report includes the results of the regulatory reviews the agency completes on a yearly basis. The NCUA's current performance target for regulatory review is to review one-third of the agency's regulations on an annual basis.

V. Operating Budget

Overview

The NCUA Operating Budget is the annual plan for resources required for the agency to conduct activities prescribed by the Federal Credit Union Act of 1934. These activities include: (1) Chartering new federal credit unions; (2) approving field of membership applications of federal credit unions; (3) promulgating regulations and providing guidance; (4) performing regulatory compliance and safety and soundness examinations; (5) implementing and administering enforcement actions, such as prohibition orders, orders to cease and desist, orders of conservatorship and orders of liquidation; and (6) administering the National Credit Union Share Insurance Fund.

Staffing

The staffing levels proposed for 2022 reflect the resource requirements that support the NCUA's continued efforts to improve the examination process and enhance the efficiency and effectiveness of the supervisory process. The 2022–2023 budget includes funding for the NCUA to increase permanent staffing in critical areas necessary to operate as an effective federal financial regulator capable of addressing emerging issues.

The 2022 budget supports a total agency staffing level of 1,247 full-time equivalents.[17] This is an increase of 48 FTEs compared to the agency's revised 2021 staffing level of 1,199. The 2021 budget, approved by the NCUA Board on December 18, 2020, funded a staffing level of 1,192 FTEs. On September 23, 2021, the NCUA Board approved seven additional FTEs. The additional Board-approved FTEs for 2021 included: Three positions for the Office of Ethics Counsel (Ethics Attorney, Ethics Specialist, and Staff Assistant), two positions for the Chief Information Officer (Cybersecurity Operations and Service Delivery Manager), one new Cybersecurity Advisory and Coordinator position in the Office of the Executive Director, and one new Special Assistant position in the Office of the Board Secretary.

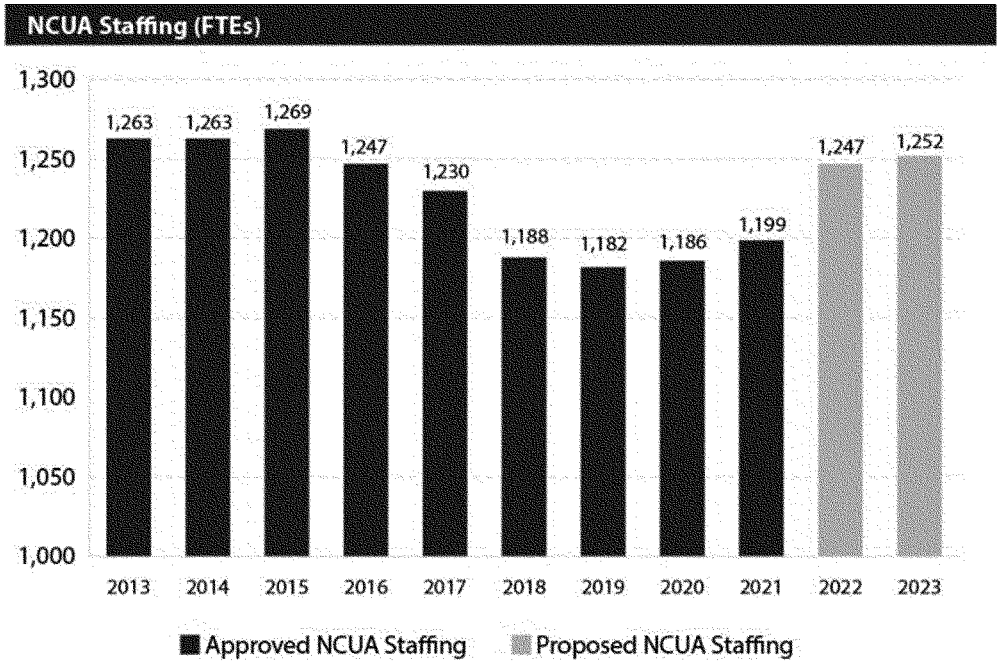
The proposed changes for the 2022 staffing level include:

- Increasing by 29 FTEs the NCUA's regional staff of examiners and supervisory examiners to support more frequent examinations for certain federal credit unions;
- Increasing by three FTEs the NCUA's regional staff to expand the agency's cadre of specialist examiners;
- Increasing by five FTEs the Office of Consumer and Financial Protection to increase the number of fair lending examinations and reviews and to strengthen the agency's efforts to promote financial inclusion and outreach;
- Increasing by two FTEs the Office of Credit Union Resources and Expansion to initiate a new program that supports small credit unions;
- Adding seven new FTEs in various other NCUA headquarters offices;
- Making permanent eight FTEs that are currently filled within the total NCUA staffing plan;
- Reducing by five FTEs the Office of the Chief Financial Officer and the Office of Examination and Insurance (E&I) by concluding the NGN program; and
- Reducing by one FTE the Office of E&I by reorganizing responsibilities within the office.

The new 2022 FTEs are described in greater detail below, while the chart illustrates the NCUA's staffing levels in recent years.[18]

[17] 1,242 FTEs are funded by the Operating Budget and five FTEs are funded by the Central Liquidity Facility.

[18] Full-time equivalent employment is the total number of regular straight-time hours (*i.e.,* not including comp time or holiday hours) worked by employees, divided by the number of compensable hours applicable to the fiscal year, as defined by OMB Circular No. A–11. The NCUA uses the number of full-time equivalent employees projected in the budget to build its estimated pay and benefits calculations. The actual number of persons employed will vary at any point in time, based on vacancies, use of part-time employees, etc.



Note: total NCUA staffing includes five FTEs funded by the Central Liquidity Facility in 2022.

Request for New Staff in 2022: +46 FTEs

The staff draft budget includes funding for 46 new FTEs in 2022, as detailed below:

Regional Credit Union Examiners +29 FTEs

The COVID–19 pandemic has resulted in challenging economic conditions that may take years to resolve fully. While federal policy and spending have managed to blunt the most severe economic effects of the pandemic, future economic conditions may change rapidly, particularly in communities of modest means that are served by credit unions. Therefore, it is prudent to expand the criteria for credit unions that meet the requirements for an annual examination to include (1) credit unions with assets between $500 million and $1 billion that have otherwise previously qualified for an extended examination cycle based on the current Exam Flexibility Initiative criteria, and (2) credit unions with assets more than $250 million and evaluated as facing a higher risk of business or economic challenges. This expansion of the annual examination requirement necessitates an increase in the examination workforce by 29 FTEs.

Regional Specialist Examiners +3 FTEs

The NCUA last evaluated its needs for specialist examiners in 2018. Since that time the number of credit unions with more than $100 million in assets has grown and the complexity of and risks to financial services' information and payments systems has also increased. In response to these dynamics within the credit union system, the NCUA conducted an analysis of its needs for specialist examiners. Three disciplines in particular are in need of additional specialists: Regional electronic payments specialists (REPSs), regional information systems officers (RISOs), and regional lending specialists (RLSs). The NCUA expects to establish 11 new REPSs, 8 new RISOs, and 4 new RLSs in its three regions. Specialist Examiners contribute to conducting examination and supervision work, but at a lower level than examiners. Therefore, the repurposing of existing authorized positions necessitates a net increase of three examiner FTEs to account for the reduction in productive time.

Small Credit Union Program Officers +2 FTEs

The NCUA, as administrator of the Federal Credit Union Act, assists credit unions with their mission and purpose of promoting thrift among their members and creating a source of credit for provident or productive purposes. Small credit unions with less than $100 million in assets are in a unique position to improve financial inclusion by offering credit and other services to their communities. These two new positions in CURE will be responsible for identifying and developing additional programs to address the needs of small credit unions. Such support could include efforts to recognize the differences between small and large credit unions in regulations, policies, and guidance; developing training for examination staff about the unique needs of small credit unions and their role serving underserved communities; promoting opportunities for small credit unions to receive support through NCUA grants, training, and other initiatives; and developing partnerships with external organizations that can support small credit unions.

Fair Lending Analysts +3 FTEs

Three new positions within OCFP will enhance the NCUA's fair lending function by increasing fair lending examinations by 50 percent (from 30 to 45 annually) and fair lending supervision contacts by 25 percent (from 40 to 50 annually). The additional staff will focus on serving as Examiner-In-Charge for and performing fair lending examinations and supervision

contacts, and recommending corrective action when required. These analysts will also serve as technical advisors and function as a regional resource for fair lending and other consumer financial protection laws and regulations affecting credit unions. Additionally, the analysts will participate on FFIEC subcommittees as well as other interagency and internal working groups.

Fair Lending Supervisor +1 FTE

The expansion of NCUA's fair lending work will require a full-time supervisor to oversee the added examination workload and ensure a more equitably balanced supervisor-to-staff ratio within OCFP. Adding an additional supervisor to oversee workload focused primarily on conducting examinations will also help foster a more independent quality control process. The new supervisor will provide leadership and direction to staff responsible for developing, monitoring, evaluating, and maintaining NCUA's fair lending program.

Financial Inclusion and Outreach Analyst +1 FTE

This new position within OCFP will be responsible for developing, coordinating, and implementing the NCUA's strategic stakeholder relationships related to community affairs, economic inclusion, and financial education and literacy activities. The new analyst's portfolio will include consumer financial inclusion/literacy issues that will require stakeholder engagement and coordination (*e.g.,* Elder Financial Abuse, Cybersecurity, FinTech and Financial Literacy, Financial Counseling/Education, Young Savings and Financial Education Programs, Underserved Outreach/Economic Inclusion). This analyst will work with NCUA's other financial literacy staff to bring together the appropriate parties, resources, and information in order to advance NCUA's financial literacy and consumer financial protection policy priorities. Such efforts will include hosting annual consumer financial protection forums, hosting regional consumer financial protection summits, holding meetings with external groups and regional and central office stakeholders, creating memorandums of understanding (MOUs) or formal collaborations, hosting webinars or training workshops, and creating industry or supervisory guidance to support the financial education and inclusion needs of credit unions, their member-owners, and the communities served.

Associate Director, Office of Examination and Insurance +1 FTE

This new position within E&I will provide executive leadership and oversight for development of the agency's examination and supervision programs. Additionally, this position will oversee policy and rulemaking functions that help ensure the safety and soundness of the credit union system and help manage expanded workload while ensuring timely delivery of agency initiatives.

System Specialist, Office of Examination and Insurance +1 FTE

This new position within E&I will manage the continuing operations and maintenance of the new MERIT system as well as other software updates planned for ongoing maintenance in 2022. Systems-related workload has generally grown within the E&I Systems Division because of tasks required to comply with increasing levels of security and administrative requirements.

Bank Secrecy Officer, Office of Examination and Insurance +1 FTE

This new position within E&I will support the growing requirements related to Bank Secrecy Act (BSA) policy, guidance, and interagency and law enforcement engagement. BSA has received increased focus and reform and efficiency improvements, and interagency initiatives have increased materially over the last two years. The workload is expected to increase as fintech, digital currency, distributed payments, and the broad range of new requirements associated with the Anti-Money Laundering Act and the Corporate Transparency Act of 2020 are developed and implemented. The NCUA, like the other financial service agencies, has an active role to play in virtually all of the new requirements, including staffing and supporting two new subcommittees of the BSA Advisory Group focusing on privacy, security, and innovation.

Division Director, Human Capital Systems and Planning +1 FTE

This new position within the Office of Human Resources will manage human capital, strategic workforce and succession planning, data analytics, workforce management prioritization, human capital systems administration, reporting, and compensation analysis. This role is essential for the day-to-day management of the Division's functions and the continuing human capital data analysis and planning needed to recruit, hire, and retain a high-performing workforce.

Senior Website Administrator, Office of External Affairs and Communications +1 FTE

This new position within the Office of External Affairs and Communications (OEAC) will supplement the existing website Administrator. Currently, the agency has one federal employee overseeing and managing the NCUA website and Section 508 compliance requirements, supported by contract staff. Demand for website support and Section 508 compliance continues to increase; new compliance requests are 25 percent higher in 2021 than 2019. The growing workload also includes compliance testing as part of the development of new systems under the Enterprise Solution Modernization program and as part of the new emphasis for NCUA online/virtual training.

Speechwriter, Office of External Affairs and Communications +1 FTE

This new position within OEAC will manage the increasing demand for external communications. The new speechwriter position would work side-by-side with OEAC's current Writer/Editor. Prior to 2019, the number of speaking events was limited to a few dozen per year. However, starting in 2019, the tempo of Board and Chairman remarks increased—setting a new standard for communications.

Asset Management and Assistance Center (AMAC) President +1 FTE

The NCUA requires a dedicated AMAC President position to provide leadership and serve as the key advisor to the NCUA Board on AMAC matters, including liquidation payouts, managing assets acquired from liquidations, and managing recoveries for the National Credit Union Share Insurance Fund (NCUSIF). This position is necessary to separate oversight of AMAC's activities from those of the Southern Region and provide dedicated leadership over AMAC operations. This role will also oversee AMAC's responsibility for providing assistance and advice pertaining to conservatorships, real estate and consumer loans, appraisals, bond claim analysis, and reconstructing accounting records.

Additional Adjustments to Authorized Staffing: +2 FTEs (NET)

In addition to the new positions proposed for 2022, the budget also includes resources to make permanent the following adjustments to the agency's staffing and within the overall 2021 Board-authorized staffing levels:

• *Office of National Examinations and Supervision:* Five FTEs to support the supervision of large consumer credit unions: One national supervision technician, one national lending specialist, one national supervision analyst, one financial data analyst, and one national information systems officer.

• *Office of Business Innovation:* One special assistant to support the growing systems requirements, analytics development expansion, and implementation and execution of a business intelligence capability plan.

• *Office of General Counsel:* One labor relations attorney to manage growing workload requirements.

• *Office of the Executive Director:* One ACCESS coordinator position will serve as a Program Officer and technical authority for NCUA's Advancing Communities through Credit, Education, Stability and Support programs. This position will be responsible for development and implementation of policies, strategies, and programs to support the goals and objectives of ACCESS, and will serve as a point of contact between the public and NCUA Regions and Offices to address questions or resolve issues regarding financial equity and inclusion.

• *NCUA Guaranteed Notes Program:* Reduction of five positions that supported the NGN program, which will be concluded in 2022.

• *Office of Examinations and Insurance:* Reduction of one supervisory position by reorganizing responsibilities within the office.

Like any government agency, the NCUA manages its changing workload within its overall authorized budgetary and staff resource levels. The NCUA Board has delegated to the Executive Director the authority to adjust staffing within total allocated resources to best respond to changing agency priorities and trends within the credit union system. The Executive Director must maintain total NCUA staffing at or below the resource levels approved within the budget, and promptly inform the Board of any significant changes to the agency's staffing allocations within the approved resource totals.

Special Surge Workforce

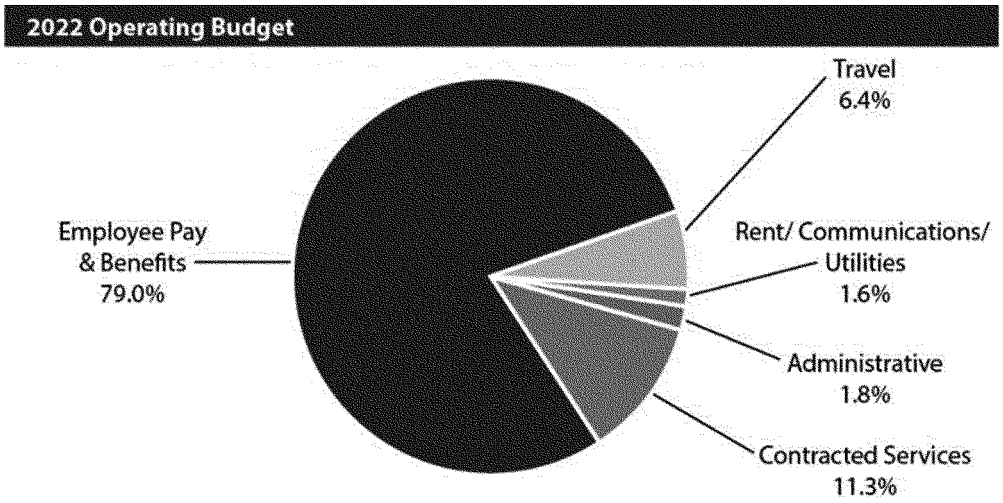
In 2021, the NCUA Board provided temporary COVID–19 hiring authority to respond to uncertainties in the credit union system. This authority continues through 2022 and provides the NCUA the ability to hire and retain for a term appointment, without a reduction to their federal annuity, up to 30 individuals who have retired from federal service into a position classified in the Credit Union Examiner 0580 occupational series. This authority allows the NCUA to add staff who are already trained and have experience examining depository financial institutions so as to be better prepared to respond to any elevated levels of problem institutions that occur in 2022. These positions are two-year, not-to-exceed appointments, meaning that any employees hired under this program can serve a maximum of two years, and the appointments can be ended prior to the end of the two-year term if they are no longer needed. These positions are funded in 2022 by using unspent 2020 Operating Budget funds not otherwise made available to offset the costs of 2022 agency operations, which is anticipated to be sufficient to fund the positions in 2022.

Budget Category Descriptions and Major Changes

There are five major expenditure categories in the NCUA budget. This section explains how these expenditures support the NCUA's operations and presents a transparent overview of the Operating Budget.

2022–2023 NCUA OPERATING BUDGET SUMMARY

Budget Cost Category	2021 Board Approved Budget	2022 Requested Budget	2021–2022 Change	Change Percent	2023 Requested Budget	2022–2023 Change	Change Percent
Employee compensation	240,811,000	257,530,000	16,719,000	6.9%	273,645,000	16,115,000	6.3%
Salaries	167,718,000	178,293,000	10,575,000	6.3%	191,023,000	12,730,000	7.1%
Benefits	73,093,000	79,237,000	6,144,000	8.4%	82,622,000	3,385,000	4.3%
Travel	12,257,000	20,806,000	8,549,000	69.7%	24,446,000	3,640,000	17.5%
Rent/Comm/Utilities	7,198,000	5,166,000	(2,032,000)	-28.2%	5,366,000	200,000	3.9%
Administrative	6,026,000	5,785,000	(241,000)	-4.0%	6,011,000	226,000	3.9%
Contracted Services	48,268,000	36,717,000	(11,551,000)	-23.9%	59,854,000	23,137,000	63.0%
Total	**$ 314,560,000**	**$ 326,004,000**	**11,444,000**	**3.6%**	**$ 369,322,000**	**43,318,000**	**13.3%**



Actual expenses for the Operating Fund are reported monthly in the Operating Fund Financial Highlights posted on the NCUA website. Share Insurance Fund Financial Reports and Statements, which are also posted to the NCUA website, detail reimbursements made to the Operating Fund for NCUA expenses.

Salaries and Benefits

The budget includes $257.5 million for employee salaries and benefits in 2022. This change is a $16.7 million, or 6.9 percent, increase from the 2021 Board-approved budget. Salaries and benefits costs make up 79 percent of the annual NCUA budget. There are two primary drivers of increased costs in 2022 for the Salaries and Benefits category:

Merit and locality pay increases for the NCUA's employees are paid in accordance with the agency's current Collective Bargaining Agreement (CBA) and its merit-based pay system. Salaries are estimated to increase 3.6 percent in aggregate compared to 2021.

Contributions for employee retirement to the Federal Employee Retirement System, which are set by the Office of Personnel Management and cannot be negotiated or changed by the NCUA. Driven largely by the mandatory FERS rate adjustment, total NCUA benefits costs increase 8.4 percent in 2022 compared to 2021.

In 2022, the NCUA's compensation levels will continue to ''maintain comparability with other federal bank regulatory agencies,'' as required by the Federal Credit Union Act.[19] The Salaries and Benefits category of the budget includes all employee pay raises for 2022, such as merit and locality increases, and those for promotions, reassignments, and other changes, as described below.

Consistent with other federal pay systems, the NCUA's compensation includes base pay and locality pay components. The NCUA staff will be eligible to receive an average merit-based increase of 3.0 percent, and an additional locality adjustment ranging from 1.0 percent to 3.0 percent, depending on the geographic location.

The first-year cost of the 48 new positions added in 2022 is estimated to be $4.0 million. Specific increases to individual offices' salaries and benefits budgets will vary based on current pay levels, position changes, and promotions.

Personnel compensation at the NCUA varies among every office and region depending on work experience, skills, years of service, supervisory or non-supervisory responsibilities, and geographic locations. In general, more than 85 percent of the NCUA workforce has earned a bachelor's degree or higher, compared to approximately 35 percent of the private-sector workforce. This high level of educational achievement ensures the NCUA workforce is able to fulfill its mission effectively and efficiently, and attracting a well-qualified workforce requires the agency to pay employees competitive salaries.

Individual employee compensation varies based on the location where the employee is stationed. The federal government sets locality pay standards, which are managed by the President's Pay Agent—a council established to make recommendations on federal pay. The council uses data from the Occupational Employment Statistics program, collected by the Bureau of Labor Statistics, to compare salaries in over 30 metropolitan areas and establishes recommendations for equitable adjustments to employee salaries to account for differences between localities.

The Office of Personnel Management's economic assumptions for actuarial valuation of the FERS have increased significantly for 2022. All federal agencies are expected to contribute 18.4 percent of FERS employees' salaries to the OPM retirement system, an increase of 110 basis points compared to the 2021 level of 17.3 percent. This mandatary contribution is prescribed in the OPM Benefits Administration Letter, dated May 2021. The estimated impact on the NCUA budget is an increase of approximately $3.4 million in mandatory payments to OPM, or approximately 21 percent of the salary and benefits growth compared to 2021 levels.

The average health insurance costs for the Federal Employees Health Benefits (FEHBP) program for 2022 are consistent with historical actual expenses and the OPM estimate that the government share of FEHBP premiums will increase 1.9 percent in 2022. The employee salary and benefits category also includes costs associated with other mandatory employer contributions such as Social Security, Medicare, transportation subsidies, unemployment, and workers' compensation.

In past years, the NCUA adjusted its budget downward by an expected vacancy rate for positions that are not filled during the year because of a time lag between employee separations and hiring new staff. Since 2018, the NCUA has lowered its vacancy rate and continues to closely monitor the hiring and attrition trends within its

[19] The Federal Credit Union Act states that, ''In setting and adjusting the total amount of compensation and benefits for employees of the Board, the Board shall seek to maintain comparability with other federal bank regulatory agencies.'' *See* 12 U.S.C. 1766(j)(2).

workforce. In anticipation of the need for a full complement of staff in 2022, and because of ongoing efforts to accelerate the agency's hiring cycle time, the proposed 2022 budget does not include a vacancy adjustment.

The 2023 budget request for salaries and benefits is estimated at $273.6 million, a $16.1 million increase from the 2022 level. Included within this total is the full-year cost impact of new positions proposed for 2022 (approximately $4.0 million), $564,000 for eight additional positions expected for 2023, merit and locality pay increases consistent with the CBA and promotions (approximately $8.2 million), and associated increases in benefits for all employees (approximately $3.4 million). The 2023 budget also includes an inflationary adjustment given the potential for a new labor contract with the NCUA employees' union that is currently under negotiation.

Travel

The 2022 budget includes $20.8 million for travel. This change is a 69.7 percent increase to the 2021 Board-approved budget.

There are three primary reasons for the significant travel budget increase compared to the 2021 levels. First, the 2021 travel budget of $12.3 million was unusually low compared to historic levels because of pandemic-related travel restrictions. Therefore, comparisons between 2021 and 2022 travel levels are not representative of typical annual travel adjustments. Second, the NCUA expects that although pandemic-related travel reductions will likely continue through the first quarter of 2022, travel will approach pre-pandemic levels for the remainder of the upcoming year. And third, the NCUA plans an expanded schedule of internal and external meeting events in 2022. A leadership and training conference is planned for senior leaders and managers to support professional development and employee engagement. The NCUA also expects to host three outreach roundtables to support stakeholder discussions on credit union industry issues.

The travel cost category includes expenses for employees' airfare, lodging, meals, auto rentals, reimbursements for privately owned vehicle usage, and other travel-related expenses. These are necessary expenses for examiners' onsite work in credit unions. Close to two-thirds of the NCUA's workforce is comprised of field staff who spend a significant part of their year traveling to conduct the examination and supervision program. During the COVID–19 pandemic, the agency and its employees successfully transitioned to an offsite examination posture, developing new procedures and processes to continue examination and supervisory work. In 2022, the NCUA will continue evaluating how it can conduct portions of its examinations remotely and offsite, which should help constrain the growth of future travel budgets.

The NCUA staff also travel for routine and specialized training. In 2021, the NCUA had planned to conduct a series of training events to support the nationwide rollout of MERIT; however, these training events were changed to virtual events in 2021 due to pandemic-related restrictions. In 2022, the NCUA expects the majority of its staff to return to in-person training starting in the second quarter of the year. As appropriate, agency personnel will continue to utilize more virtual training options to help reduce travel expenses.

The 2023 budget request for travel is estimated to be $24.4 million, or a 17.5 percent increase compared to the 2022 level. This increase reflects the return to a full-year of travel spending without pandemic-related restrictions and supports travel for a national training conference for all employees.

Rent, Communications, and Utilities

The 2022 budget includes $5.2 million for rent, communications, and utilities. This is a $2.0 million decrease, or 28.2 percent less than the 2021 Board-approved budget. The Rent, Communications, and Utilities budget funds the agency's telecommunications and information technology network expenses and facility rental costs.

Telecommunication charges include leased data lines, domestic and international voice (including mobile), and other network charges. Telecommunication costs also include the circuits and any associated usage fees for providing voice or data telecommunications service between data centers, office locations, the internet, and any customer, supplier, or partner.

The 2022 budget includes funding to support procurement of additional circuits and express routers for Microsoft365 implementation, the agency's data connectivity at NCUA disaster recovery sites, and transition to the GSA-managed Enterprise Infrastructure Solutions. EIS is the federal government's contract for enterprise telecommunications and networking solutions. By transitioning to EIS, the NCUA will benefit from the comprehensive solution EIS provides to address all aspects of federal agency IT, telecommunications, and infrastructure requirements. This new acquisition strategy with a new vendor reduced the agency's annual telecommunications by approximately $2.2 million, accounting for most of the Rent, Communications, and Utilities budget decrease compared to 2021. Other cost reductions were attributed to a new award for Federal Relay Services, saving $170,000.

Office building leases, meeting space rentals, office utilities, and postage expenses are also included in this budget category. Facility costs are approximately $720,000 in 2022 for office space rental for the Western Region, insurance, and ancillary costs for the NCUA Central Office. The annual utility costs for the Central Office and regional offices are estimated at $453,000.

The 2022 budget also includes $686,000 for event rental costs for examiner meetings, a leadership conference, three roundtable events, and credit union examiner training events.

The 2023 budget request for the Rent, Communications, and Utilities category is estimated to be $5.4 million, or a 4.0 percent increase compared to 2022. The $200,000 increase is primarily associated with audio-visual and telecommunication expenses for the planned NCUA national training conference.

Administrative Expenses

The 2022 budget includes $5.8 million for administrative expenses. This is a decrease of $241,000, or 4.0 percent, compared to the 2021 Board-approved budget. Recurring costs in the Administrative Expenses category include the annual reimbursement to the Federal Financial Institutions Examination Council, employee relocation expenses, recruitment and advertising expenses, shipping, printing, subscriptions, examiner training and meeting supplies, office furniture, and employee supplies and materials.

As part of the FFIEC, the NCUA shares in costs for joint actions and services that affect the financial services industry. The FFIEC costs are estimated to be $82,000 lower in 2022 than 2021 for a total NCUA cost sharing payment of $1.3 million.

The ongoing use of telework in 2022 is expect to lower supplies, materials, and subscription costs for an estimated savings of $294,000 compared with the 2021 budget.

The 2022 budget includes $1.0 million for employee relocations, an increase of $250,000 compared to the 2021 budget. Relocation costs are paid by the NCUA to employees who are

competitively selected for a promotion or new job within the agency in a different geographic area than where they live.

The 2023 budget request for Administrative Services is estimated to be $6.0 million, or a 3.9 percent increase to support administrative expenses for the planned NCUA national training conference.

Contracted Services

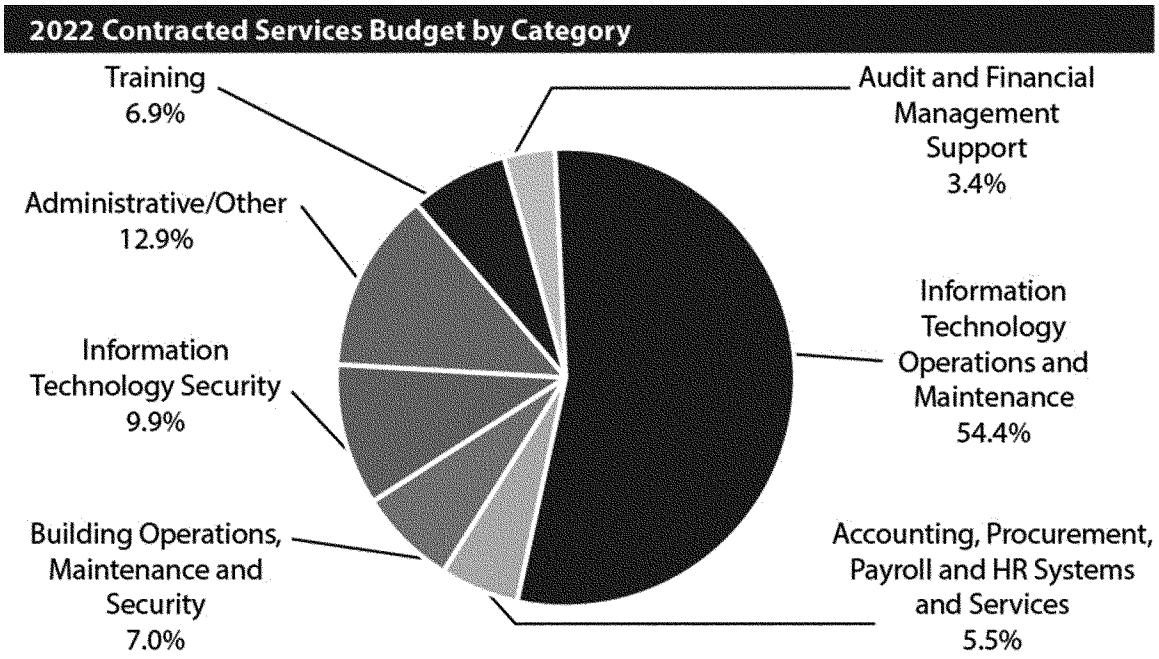
The 2022 budget includes $36.7 million for contracted services. This is a $11.6 million decrease, or 23.9 percent, compared to the 2021 Board-approved budget. However, $23.0 million of unspent budget amounts from prior years will be used to pay for 2022 contracted services expenses. Therefore, the total planned budget for contracted services in 2022 is approximately $59.7 million.

The Contracted Services budget category includes the agency's costs incurred when products and services are acquired in the commercial marketplace. Acquiring specific expertise or services from contract providers is often the most cost-effective approach to fulfill the NCUA's mission. Such services include critical mission support, such as information technology equipment and software development, accounting and auditing services, and specialized subject matter expertise that enable staff to focus on core mission execution.

The majority of funding in the Contracted Services category supports the NCUA's robust supervision framework and includes funding for tools used to identify and resolve risk concerns such as interest rate risk, credit risk, and industry concentration risk, as well as by addressing new and evolving operational risks such as cybersecurity threats. Growth in the contracted services budget category results primarily from new operations and maintenance costs associated with capital investments, such as the Examination and Supervision Solution system, which is commonly known as MERIT. Other costs include core agency business operation systems such as accounting and payroll processing, and various recurring costs, as described in the following seven major categories:

- Information Technology Operations and Maintenance (54.4 percent of contracted services)
  - IT network support services and help desk support
  - Contractor program and web support and network and equipment maintenance services
  - Administration of software products such as Microsoft Office, Share Point, and audio visual services
- Administrative Support and Other Services (12.9 percent of contracted services)
  - Examination and Supervision program support
  - Technical support for examination and cybersecurity training programs
  - Equipment maintenance services
  - Legal services and other expert consulting support
  - Other administrative mission support services for the NCUA central office
- Accounting, Procurement, Payroll, and Human Resources Systems (5.5 percent of contracted services)
  - Accounting and procurement systems and support
  - Human resources, payroll, and employee services
  - Equal employment opportunity and diversity programs
- Building Operations, Maintenance, and Security (7.0 percent of contracted services)
  - Central office facility operations and maintenance
  - Building security and continuity programs
  - Personnel security and administrative programs
- Information Technology Security (9.9 percent of contracted services)
  - Enhanced secure data storage and operations
  - Information security programs
  - Security system assessment services
- Training (6.9 percent of contracted services)
  - Examiner staff, technical and specialized training and development
  - Senior executive and mission support staff professional development
- Audit and Financial Management Support (3.4 percent of contracted services)
  - Annual audit support services
  - Material loss reviews
  - Investigation support services
  - Financial management support services

The following pie chart illustrates the breakout of the seven categories for the total 2022 Contracted Services budget of $59.7 million, with $36.7 million funded from 2022, and $23.0 million funded from prior year available balances.



Note: Minor rounding differences may occur in totals.

Major programs within the contracted services category include:

• *Training requirements for the examiner workforce.* The NCUA's most important resource is its highly educated, experienced, and skilled workforce. It is important that staff have the proper knowledge, skills, and abilities to perform assigned duties and meet emerging needs. Each year, examiners complete a wide range of training classes to ensure their skills and industry knowledge are kept up to date, including in core areas such as capital markets, consumer compliance, and specialized lending. Major training deliverables for 2022 include classes offered by the Federal Financial Institutions Examination Council, updated examiner classes, and subject matter expert training sessions for the NCUA examiners. All examiner courses will be updated to reflect changes from the AIRES to MERIT systems.

Contracted service providers, in partnership with the NCUA subject matter experts, will develop and design training classes for examiners and continue work on the triennial review of the NCUA's Subject Matter Examiner (SME) course curriculum. The NCUA's new Talent Management System will continue to be updated to refine the current online courses. Additionally, contracted service providers and central office staff will continue conducting organizational development, leadership, and teambuilding training.

• *Information security program.* This NCUA program supports ongoing efforts to strengthen the agency's cybersecurity and ensure its compliance with the Federal Information System Management Act.

• *Agency financial management services, human resources technology support, and payroll services.* The NCUA contracts for these back-office support services with the U.S. Department of Transportation's Enterprise Service Center (DOT/ESC) and the General Services Administration. The NCUA's human resource system, HR Links, also adopted by other federal agencies, is a shared solution that automates routine human resource tasks and improves time and attendance functionality.

• *Audit.* The NCUA Office of Inspector General contracts with an accounting firm to conduct the annual audit of the agency's four permanent funds. The results of these audits are posted annually on the NCUA website and also included as part of the agency's Annual Report.

A significant share of the budget for the Contracted Services category finances ongoing information technology infrastructure support for the agency. The 2022 budget includes the second year of funding for operations and maintenance of the MERIT system, which replaced the legacy AIRES examination system in 2021. Several other of the NCUA's core information technology systems and processes also require additional contract support in 2022, which results in increased budgets in the Contracted Services category, as described below.

Within the budget for the Office of Chief Information Officer (OCIO), an additional $10.9 million compared to the 2021 budget level is required for:

• Information technology infrastructure operations and maintenance labor support for MERIT and other NCUA legacy systems;

• Application tools that support the new MERIT system and other mission critical and business applications; and

• Enhanced cybersecurity operations to support the implementation of the Executive Order on *Improving the Nation's Cybersecurity.*

Within the Office of Human Resources, contracted services increase by $335,000 compared to the 2021 budget level, primarily for program support for human resource capital and workforce programs, projects, training support, and management systems.

Within the Office of Credit Union Resources and Expansion, contracted services increase by $450,000 compared to the 2021 budget level. Of this amount, $350,000 will support a new initiative to support small credit unions, while $100,000 will be used to support the NCUA's grants program and other activities that cultivate small, minority-designated, and low-income-designated credit unions.

The Office of Minority Women and Inclusion's (OMWI) contract budget increases by $223,000 compared to the 2021 budget level. This increase will help OMWI achieve the goals established in the agency's Diversity and Inclusion Strategic Plan to promote diversity and inclusion within the agency and the credit union industry

and ensure equal opportunity in accordance with the mandates of Section 342 of the Dodd-Frank Act. OMWI expects to host an in-person *Diversity Equity and Inclusion Summit* in 2022 to bring together credit union professionals to: Promote the value of diversity, equity, and inclusion for credit unions; share best diversity, equity, and inclusion practices; and develop solutions to industry-specific challenges in this arena. Additionally, OMWI expects to automate a critical internal business process to ensure the agency can respond efficiently to federally mandated Equal Employment Opportunity Commission management directives.

Within the Office of the Chief Financial Officer, 2022 contracted service reductions of $369,000 compared to the 2021 budget level are associated with decreased operational costs for administrative and logistical support (*e.g.,* mail, distribution, copying) and reductions of one-time 2021 contract items. In addition, parking expenses for Central Office staff are reduced in anticipation of an increase in employee telework.

Contracted services spending for 2023 is estimated at $59.9 million, roughly the same as 2022. Because unspent prior-year budgets are not expected to be available again in 2023, the Contracted Services budget increases by $23.0 million between 2022 and 2023.

VI. Capital Budget

Overview

Annually, the NCUA carries out a rigorous review process to identify the agency's needs for information technology (IT), facility improvements and repairs, and other multi-year capital investments. The NCUA staff review the agency's inventory of owned facilities, equipment, IT systems, and IT hardware to determine what requires repair, major renovation, or replacement. The staff then make recommendations for prioritized investments to the NCUA Board.

IT systems and hardware require significant capital expenditures for modern organizations. The 2022 budget continues the NCUA's multi-year investment in current and replacement IT systems. The budget fully supports the NCUA's effort to modernize its IT infrastructure and applications, including the first full year for field staff to use MERIT, which is the NCUA's Examination and Supervision Solution (ESS) project that replaces the legacy Automated Integrated Regulatory Examination System. Other IT investments include the deployment of new laptops on the Windows 11 platform, ongoing enhancements and upgrades to decades-old legacy systems, network servers, and systems to ensure the agency's cybersecurity posture complies with Executive Order 14208, and various hardware investments to refresh agency networks and ensure staff have the tools necessary to maintain and increase their productivity.

Routine repairs and lifecycle-driven property renovations are also necessary to properly maintain investments in the NCUA-owned properties. The NCUA Facilities Manager assesses the agency's properties to determine the need for essential repairs, replacement of building systems that have reached the end of their engineered lives, or renovations required to support changes in the agency's organizational structure or address revisions to building standards and codes.

The NCUA's staff draft 2022 capital budget is $13.1 million. The capital budget funds the NCUA's long-term investments. The 2022 capital budget provides $3.3 million for IT software development projects and $8.3 million in other IT investments for 2022. The NCUA facilities require $1.5 million in capital investments.

2022 – 2023 NCUA CAPITAL BUDGET

	2021 Board Approved Budget	2022 Requested Budget	Change (2021-2022)	Change Percent (2021-2022)	2023 Requested Budget	Change (2022-2023)	Change Percent (2022-2023)
IT software development investments	$ 11,968,000	$ 3,304,000	$ (8,664,000)	-72.4%	$ 8,399,000	$ 5,095,000	154.2%
Other Information technology investments	$ 5,627,000	$ 8,265,000	$ 2,638,000	46.9%	$ 4,670,000	$ (3,595,000)	-43.5%
Capital building improvements and repairs	$ 1,250,000	$ 1,500,000	$ 250,000	20.0%	$ -	$ (1,500,000)	-100.0%
Total	**$ 18,845,000**	**$ 13,069,000**	**$ (5,776,000)**	**-30.7%**	**$ 13,069,000**	**$ -**	**0.0%**

Detailed descriptions of all 2022 capital projects, including a discussion of how each project helps the agency achieve its goals and objectives, are provided in Appendix B.

Summary of Capital Projects

Examination and Supervision Solution and Infrastructure Hosting ($0.9 Million)

The purpose of the Examination and Supervision Solution and Infrastructure Hosting (ESS&IH) project is to deliver a new, flexible, technical foundation to enable current and future NCUA business process modernization initiatives. ESS&IH replaces the NCUA's legacy examination system, AIRES, with the new MERIT system. In 2021, all NCUA examiners were trained to use the new MERIT system. MERIT was fully deployed to all NCUA examiners in the fall of 2021. In 2022, capital investments in ESS&IH will allow the NCUA to address system bugs reported by the broader user base, continue to enhance MERIT and the ESS suite of applications based on user feedback, and bring additional NCUA applications onto *NCUA Connect* to leverage this new enterprise service to meet multi-factor authentication security requirements.

Data Reporting Solution (DRS) ($0.7 Million)

The purpose of this project is to support the NCUA's Enterprise Solution Modernization (ESM) program. The DRS is part of the overarching Enterprise System Modernization (ESM) program, and focused on implementing a business intelligence (BI) solution for enhanced data access, integrity, analytics and reporting. DRS will provide a modern self-service BI tool for the enterprise, as well as access to data

to enable staff to efficiently and effectively utilize the tool. DRS leverages other key modernization initiatives: The Enterprise Central Data Repository (ECDR), the new enterprise data integration point and platform to support data and analytic initiatives, as well as expanded examination data in MERIT.

Enterprise Data Program ($0.4 Million)

The purpose of this project is the centralization, organization, and storage of the NCUA's data. The primary goal is to enable the NCUA to manage enterprise data as a strategic asset through its full lifecycle (create/collect, manage/move, consume, dispose). For 2022, the Enterprise Data Program (EDP) capital funds will be used to improve the agency's effectiveness by maturing data management practices. This will help ensure the use of high-quality data in operations, reporting, and analytics. This is a highly collaborative effort to facilitate alignment across offices and will make data-related work more effective and efficient.

NCUA Website Development ($0.1 Million)

This project provides ongoing improvements to the website, such as an improved user experience, and supports the ongoing maintenance needs of the agency's public websites: *NCUA.gov* and *MyCreditUnion.gov*.

Significant Regulatory Changes ($1.0 Million)

These funds will allow for applications and databases to be updated to accommodate any regulatory changes going into effect in 2022, which can impact multiple legacy systems. These changes can be significant, requiring additional time and resources to ensure affected systems are updated before final regulations become effective. Examples of Board-approved initiatives from 2021 include: Adding the sensitivity or ''S'' component rating to the existing CAMEL system and approval of the Current Expected Credit Losses (CECL) Phase-in Final Rule in June of 2021.

Credit Union Locator and Research a Credit Union Updates ($0.2 Million)

The current CU Locator and Research a Credit Union websites are public-facing websites that can be accessed through *NCUA.gov*. Both websites are used externally by credit unions, credit union members, and the public. These websites are not currently optimized for use on mobile devices, nor Section 508 compliant. This investment will update both CU Locator and Research a Credit Union websites to make them responsive for mobile devices (*e.g.,* automatically resize to the screen size of a phone or tablet), Section 508 compliant, and add functionalities based upon requirements gathered.

Enterprise Laptop Refresh ($5.0 Million)

The agency's current laptops are more than four years old and in need of replacement. This capital investment will fund (1) the selection of new, standard laptop configurations, (2) testing the new laptops and operating system with the NCUA's existing business and productivity applications, network, and peripherals (*e.g.,* keyboards, printers and scanners), (3) device acquisition, and (4) the deployment of the new devices to all NCUA employees and contractors.

Information Technology Infrastructure, Platform and Security Refresh ($1.6 Million)

The purpose of the Information Technology (IT) Infrastructure, Platform and Security Refresh project is to replace outdated or end-of-life network and platform hardware, as well as to prepare the NCUA for cloud computing adoption. This investment helps ensure business continuity and efficient operations by improving system availability and stability.

Hybrid Work Environment Updates ($0.3 Million)

The NCUA's current inventory of Voice over Internet Protocol (VoIP) desk and speaker phones are end-of-life and will be replaced in 2022. This investment will provide Microsoft Teams-compatible VoIP speaker phones. This project will also integrate the reservation system for the conference rooms into the NCUA's M365 service platform.

Executive Order on Improving the Nation's Cybersecurity ($1.4 Million)

This investment will ensure the NCUA complies with Executive Order 14208, *Improving the Nation's Cybersecurity*. The project funds will enable the NCUA to accelerate (1) implementation of Multi-Factor Authentication (MFA) for all NCUA applications, (2) use of a zero-trust architecture for the NCUA's infrastructure and applications, and (3) transition of computing and storage resources from on-premise to a cloud service provider.

Central Office Heating, Ventilation, and Air Conditioning (HVAC) System Replacement ($1.5 Million)

The NCUA central office HVAC system replacement project will replace all HVAC systems in the headquarters building, including cooling towers, air handlers, boilers, and all other HVAC components. The current HVAC system is original to the facility—it is 29 years old, obsolete, and some component parts are no longer available. HVAC systems are the biggest users of electricity in a facility, and the anticipated life span of major system components is approximately 20 to 25 years. The current system is at the end of its useful life, and it is not working efficiently. In recent years, the maintenance and operating costs have increased considerably and system components are failing more frequently, which are clear signs of decreased reliability.

VII. Share Insurance Fund Administrative Budget

Overview

The Share Insurance Fund Administrative Budget funds direct costs associated with authorized Share Insurance Fund activities.[20] Direct costs to the Share Insurance Fund include items such as data subscriptions and technology tools for ONES analysis of large credit unions, travel for state examiners attending NCUA-sponsored training, and audit support for the Share Insurance Fund's financial statements. Beginning in 2022 the Share Insurance Fund Administrative Budget will also include certain insurance-related expenses for AMAC operations.

The Share Insurance Fund Administrative Budget also pays for costs associated with the Corporate System Resolution Program and related NGN program. On June 14, 2021, the last outstanding NGN Trust matured. Most of the remaining Corporate System Resolution Program assets held by the NCUA will be sold in 2022. The budget for the NGN program therefore decreases in 2022 compared to the 2021 NGN funding levels.

Budget Requirements and Description

The 2022 Share Insurance Fund Administrative budget is estimated to be

[20] Direct costs are exclusive of any costs that are shared with the Operating Fund through the Overhead Transfer Rate, and with payments available upon requisition by the Board, without fiscal year limitation, for insurance under section 1787 of this title, and for providing assistance and making expenditures under section 1788 of this title in connection with the liquidation or threatened liquidation of insured credit unions as it may determine to be proper.

$6.2 million, which is $1.7 million, or 21.7 percent, less than 2021.

The 2022 budget decrease is primarily driven by phase out of the NGN program. Therefore the expenses required to maintain the program decrease compared to 2021.

The 2023 requested budget supports similar workload and resources for Share Insurance Fund direct expenses, which are expected to remain the same as 2022 at $4.8 million, and includes no NGN related costs.

Share Insurance Fund Direct Expenses

Direct expenses to the Share Insurance Fund are estimated to be $4.8 million in 2022, an increase of $0.3 million, or 7.4 percent, compared to the 2021 budget level.

Direct charges to the Share Insurance Fund include $2 million for operating and maintenance costs of the Asset and Liabilities Management system (ALM), which allows the NCUA to build internal analytical capabilities to conduct supervisory stress testing analyses and to perform other quantitative risk assessments of large credit unions.

In 2022 the Share Insurance Fund will begin paying for certain insurance-related activities and expenses of AMAC. The Share Insurance Fund budget includes $0.4 million for these AMAC activities, such as consulting expenses necessary to prevent or attempt to prevent a liquidation or conservatorship, staff travel for consultation on complex or problem cases, and an initial review of the successes and challenges of the Corporate System Resolution Program.

The 2022 budget also includes funds related to the supervisory responsibilities that the NCUA shares with State Supervisory Authorities (SSAs). The Share Insurance Fund Administrative Budget includes $1.2 million for state examiner travel to NCUA-sponsored training classes, and $0.2 million to ensure that SSAs can use the full functionality of the recently deployed MERIT examination system. The 2021 budget included similar amounts for these activities.

Finally, the Share Insurance Fund Administrative Budget includes $0.9 million for the related annual financial audit and for contractor support to ensure effective internal controls for the fund.

NGN Program

In 2017 the Board voted to close the Temporary Corporate Credit Union Stabilization Fund. Since 2018 the Share Insurance Fund has funded the NGN program and related administrative costs to include employee pay, benefits, travel, and contract support required to support the program.

The NGN program will substantially conclude in 2022, and the 2022 budget for this program decreases as a result. The NGN budget falls in 2022 by almost 60 percent, to $1.5 million from $3.5 million in 2021. The largest expenses remaining in this budget include $0.5 million for employee compensation and $0.6 million for third-party valuation services required for the remaining legacy assets. The five positions associated with the NGN program will be eliminated.

Because the NGN program will wind down in 2022, there will be no NGN budget in 2023.

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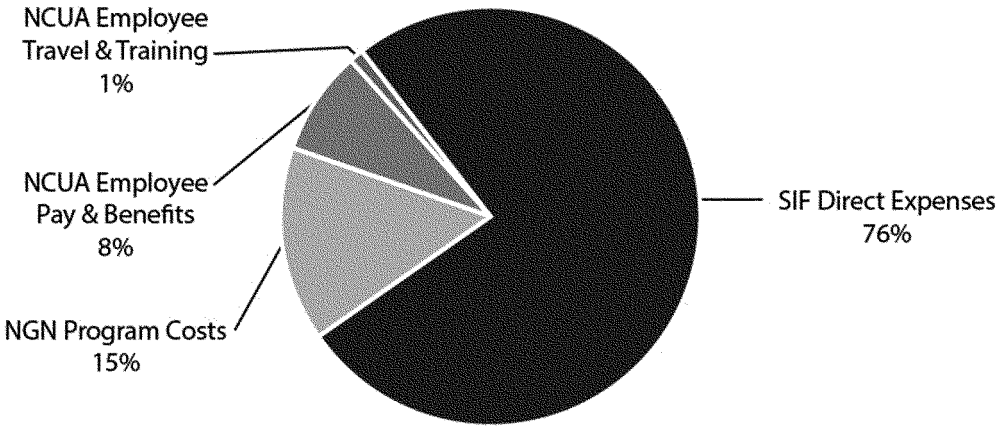
2022 Share Insurance Fund Administrative Budget



2022–2023 SHARE INSURANCE FUND ADMINISTRATIVE BUDGET

	2021 Board Approved Budget	2022 Requested Budget	Change (2021–22)	Change Percent (2021–22)	2023 Requested Budget	2022 FTE	2023 FTE
SIF Direct Expenses							
Travel							
OHR: State Examiner Training	1,754,000	1,185,000	(569,000)	-32.4%	1,185,000		
AMAC: Staff travel for problem cases	n/a	15,000	15,000	-	15,000		
Subtotal, Travel (SIF Direct Expenses)	**1,754,000**	**1,200,000**	**(554,000)**	**-31.6%**	**1,200,000**		
Administrative Expenses							
ONES: Analytic Tools for Large Credit Unions	-	30,000	30,000	-	30,000		
AMAC: Shipping and Miscellaneous Admin	n/a	20,000	20,000	-	20,000		
Subtotal Administrative Expenses (SIF Direct Expenses)	-	**50,000**	**50,000**	-	**50,000**		
Contracted Services							
OCIO: State Examiner Computer Leases	62,000	-	(62,000)	-100.0%	-		
ONES: Analytic Tools for Large Credit Unions	1,441,000	2,000,000	559,000	38.8%	2,000,000		
OCFO: Financial Accounting, Audit Support, Bank Charges	906,000	915,000	9,000	1.0%	915,000		
OBI: SSA costs for MERIT	277,000	200,000	(77,000)	-27.8%	200,000		
AMAC: Corp. Resolution Study, legal, other contracts	n/a	405,000	405,000	-	405,000		
Subtotal, Contracted Services (SIF Direct Expenses)	**2,686,000**	**3,520,000**	**834,000**	**31.0%**	**3,520,000**		
Total, SIF Direct Expenses	**4,440,000**	**4,770,000**	**330,000**	**7.4%**	**4,770,000**		
NGN Support							
Personnel Compensation	**1,500,000**	**500,000**	**(1,000,000)**	**-66.7%**	-	-	-
Travel	**52,000**	**26,000**	**(26,000)**	**-50.0%**	-		
Administrative Expenses							
E&I: Software and Data Subscriptions	**564,000**	**360,000**	**(204,000)**	**-36.2%**	-		
Contracted Services							
E&I: Valuation Services, Contract Support, Training	**1,417,000**	**590,000**	**(827,000)**	**-58.4%**	-		
Total, NGN Support	**3,533,000**	**1,476,000**	**(2,057,000)**	**-58.2%**	-		
Total SIF BUDGET	**$ 7,973,000**	**$ 6,246,000**	**$(1,727,000)**	**-21.7%**	**$ 4,770,000**	-	-

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VIII. Financing the NCUA Programs

Overview

The NCUA incurs various expenses to achieve its statutory mission, including those involved in examining and supervising federally insured credit unions. The NCUA Board adopts an Operating Budget, a Capital Budget, and a Share Insurance Fund Administrative Budget each year to fund the vast majority of the costs of operating the agency.[21] When formulating the annual budget, the NCUA is mindful that its operating funding comes from credit unions. The agency strives to ensure the agency operates in an efficient, effective, transparent, and fully accountable manner.

The Federal Credit Union Act authorizes two primary sources to fund the Operating Budget:

1. Requisitions from the Share Insurance Fund ''for such administrative and other expenses incurred in carrying out the purposes of [Title II of the Act] as [the Board] may determine to be proper''; [22] and
2. ''fees and assessments (including income earned on insurance deposits) levied on insured credit unions under [the Act].'' [23]

Among the fees levied under the Act are annual Operating Fees, which are required for federal credit unions under 12 U.S.C. 1755 ''and may be expended by the Board to defray the expenses incurred in carrying out the provisions of [the Act,] including the examination and supervision of [federal credit unions].''

Taken together, these authorities effectively require the Board to determine which expenses are appropriately paid from each source while giving the Board broad discretion in allocating expenses.

In 1972, the Government Accountability Office recommended the NCUA adopt a method for allocating Operating Budget costs—that is, the portion of the NCUA's budget funded by requisitions from the Share Insurance Fund and the portion covered by Operating Fees paid by federal credit unions.[24] The NCUA has since used an allocation methodology known as the Overhead Transfer Rate (OTR) to

[21] Some costs are directly charged to the Share Insurance Fund when appropriate to do so. For example, costs for training and equipment provided to State Supervisory Authorities are directly charged to the Share Insurance Fund.

[22] 12 U.S.C. 1783(a).

[23] 12 U.S.C. 1766(j)(3). Other sources of income for the Operating Budget have included interest income, funds from publication sales, parking fee income, and rental income.

[24] *http://www.gao.gov/assets/210/203181.pdf.*

determine how much of the Operating Budget to fund with a requisition from the Share Insurance Fund.

The NCUA uses the OTR methodology to allocate agency expenses between these two primary funding sources. Specifically, the OTR is the formula the NCUA uses to allocate insurance-related expenses to the Share Insurance Fund under Title II of the Act. Almost all other operating expenses are funded through collecting annual Operating Fees paid by federal credit unions.[25]

Two statutory provisions directly limit the Board's discretion with respect to Share Insurance Fund requisitions for the NCUA's Operating Budget and, hence, the OTR. First, expenses funded from the Share Insurance Fund must carry out the purposes of Title II of the Act, which relate to share insurance.[26] Second, the NCUA may not fund its entire Operating Budget through charges to the Share Insurance Fund.[27] The NCUA has not imposed additional policy or regulatory limitations on its discretion for determining the OTR.

Overhead Transfer Rate (OTR)

The NCUA conducts a comprehensive workload analysis annually. This analysis estimates the amount of time necessary to conduct examinations and supervise federally insured credit unions in order to carry out the NCUA's dual mission as insurer and regulator. This analysis starts with a field-level review of every federally insured credit union to estimate the number of workload hours needed for the current year. These estimates are informed by the overall parameters of the NCUA's examination program, as most recently updated by the Exam Flexibility Initiative approved by the Board.[28] The workload estimates are then refined by regional managers and submitted to the NCUA headquarters for the annual budget proposal. The OTR methodology accounts for the costs of the NCUA, not the costs of state regulators. Therefore, there are no calculations made for state examiner hours.

There have not been any major changes to the parameters of the examination program since the current OTR methodology went into effect.[29] The minor variations in the OTR since 2018 are the result of routine, small fluctuations in the variables that affect the OTR, including normal fluctuations in the workload budget from one calendar year to the next.

The NCUA Board approved the current methodology for calculating the OTR at its November 2017 open meeting.[30] In 2020, the Board published in the **Federal Register** a request for comment regarding the OTR methodology but did not propose or adopt any changes to the current methodology.[31] The OTR is designed to cover the NCUA's costs of examining and supervising the risk to the Share Insurance Fund posed by all federally insured credit unions, as well as the costs of administering the fund. The OTR represents the percentage of the agency's operating budget paid for by a transfer from the Share Insurance Fund. Federally insured credit unions are not billed for and do not have to remit the OTR amount; instead, it is transferred directly to the Operating Fund from the Share Insurance Fund. This transfer, therefore, represents a cost to all federally insured credit unions.

The OTR formula uses the following underlying principles to allocate agency operating costs:

1. Time spent examining and supervising federal credit unions is allocated as 50 percent insurance related.[32]

2. All time and costs the NCUA spends supervising or evaluating the risks posed by federally insured, state-chartered credit unions or other entities that the NCUA does not charter or regulate (for example, third-party vendors and Credit Union Service Organizations (CUSOs)) are allocated as 100 percent insurance related.[33]

3. Time and costs related to the NCUA's role as charterer and enforcer of consumer protection and other non-insurance based laws governing the operation of credit unions (like field of membership requirements) are allocated as 0 percent insurance related.[34]

4. Time and costs related to the NCUA's role in administering federal share insurance and the Share Insurance Fund are allocated as 100 percent insurance related.[35]

These four principles are applied to the activities and costs of the agency to determine the portion of the agency's budget that is funded by the Share Insurance Fund. Based on the Board-approved methodology and the proposed staff draft budget, the OTR for 2022 is 110 basis points (1.1 percent) higher than 2021, and estimated to be 63.4 percent. Thus, 63.4 percent of the total Operating Budget is estimated to be paid out of the Share Insurance Fund. The remaining 36.6 percent of the Operating Budget is estimated to be paid for by Operating Fees collected from federal credit unions. The explicit and implicit distribution of total Operating Budget costs for federal credit unions and federally insured, state-chartered credit unions is outlined in the table below:

[25] Annual Operating Fees must ''be determined according to a schedule, or schedules, or other method determined by the NCUA Board to be appropriate, which gives due consideration to the expenses of the [NCUA] in carrying out its responsibilities under the [Act] and to the ability of [FCUs] to pay the fee.'' 12 U.S.C. 1755(b).

[26] 12 U.S.C. 1783(a).

[27] The Act in 12 U.S.C. 1755(a) states, ''[i]n accordance with rules prescribed by the Board, each [federal credit union] shall pay to the [NCUA] an annual operating fee which may be composed of one or more charges identified as to the function or functions for which assessed.'' *See also* 12 U.S.C. 1766(j)(3).

[28] The Exam Flexibility Initiative started with the January 1, 2017, examination cycle, and it allows for extended examination cycles for eligible credit unions. Letters to Credit Unions 16–CU–12, December 2016.

[29] On November 16, 2017, the NCUA Board adopted a new methodology for calculating the OTR starting with the 2018 OTR. 82 FR 55644, November 22, 2017.

[30] 82 FR 55644 (Nov. 22, 2017).

[31] *https://www.federalregister.gov/documents/2020/08/31/2020-17009/request-for-comment-regarding-national-credit-union-administration-overhead-transfer-rate.*

[32] The 50 percent allocation mathematically emulates an examination and supervision program design where the NCUA would alternate examinations, and/or conduct joint examinations, between its insurance function and its prudential regulator function if they were separate units within the NCUA. It reflects an equal sharing of supervisory responsibilities between the NCUA's dual roles as charterer/prudential regulator and insurer given both roles have a vested interest in the safety and soundness of federal credit unions. It is consistent with the alternating examinations the FDIC and state regulators conduct for insured state-chartered banks as mandated by Congress. Further, it reflects that the NCUA is responsible for managing risk to the Share Insurance Fund and therefore should not rely solely on examinations and supervision conducted by the prudential regulator.

[33] The NCUA does not charter state-chartered credit unions nor serve as their prudential regulator. The NCUA's role with respect to federally insured state-chartered credit unions is as insurer. Therefore, all examination and supervision work and other agency costs attributable to insured state-chartered credit unions is allocated as 100 percent insurance related.

[34] As the federal agency with the responsibility to charter federal credit unions and enforce non-insurance related laws governing how credit unions operate in the marketplace, the NCUA resources allocated to these functions are properly assigned to its role as charterer/prudential regulator.

[35] The NCUA conducts liquidations of credit unions, insured share payouts, and other resolution activities in its role as insurer. Also, activities related to share insurance, such as answering consumer inquiries about insurance coverage, are a function of the NCUA's role as insurer.

2022 Estimated Distribution: OTR and Operating Fee		
Est. Share of the Operating Budget covered by:	Federal Credit Unions	Federally Insured, State-Chartered Credit Unions
Federal Credit Union Operating Fee	36.6%	0.0%
OTR x Percent of Insured Shares	31.7% (63.4% x 49.9%)	31.7% (63.4% x 50.1%)
Total	**68.3%**	**31.7%**

To determine the funds transferred from the Share Insurance Fund to the Operating Fund, the OTR is applied to actual expenses incurred each month. Therefore, the rate calculated by the OTR formula is multiplied by each month's actual operating expenditures and the product of that calculation is transferred from the Share Insurance Fund to the Operating Fund. This monthly reconciliation to actual operating expenditures captures the variance between actual and budgeted amounts, so when the NCUA's expenditures are less than budgeted, the amount charged to the Share Insurance Fund is also less—and those lower expenditures benefit both federally chartered and state chartered credit unions.

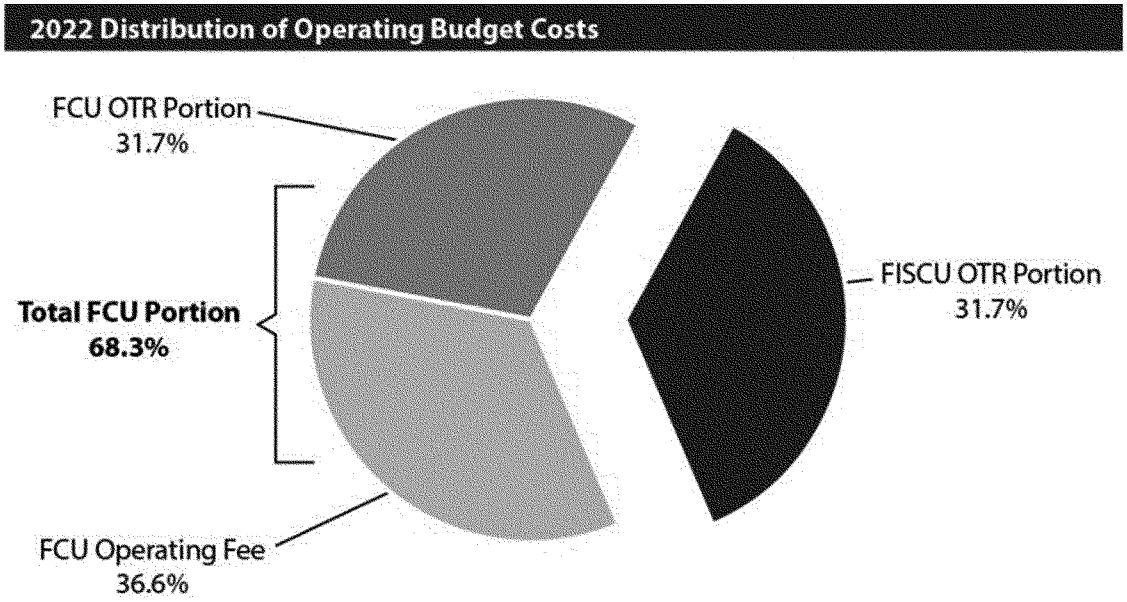
The use of insured shares in calculating the OTR was eliminated from the OTR methodology adopted by the Board in 2017. However, insured shares are used for informational purposes to reflect the fundamental economics with respect to how the implicit costs of the OTR are borne by federal and state-chartered credit unions. Use of insured shares is consistent with the mutual nature of the Share Insurance Fund and part of the statutory scheme related to Share Insurance Fund deposits, premiums, and dividends.[36] The number, size, and health of federal and state credit unions affects the NCUA's workload budget, which in turn is one of the variables in the OTR methodology.

The primary driver of the increase in the estimated 2022 OTR is the proposed increase in examination and supervision time for federally insured credit unions that results from proposals in the staff draft budget to conduct annual examinations for certain credit unions, and other program obligations associated with examination scheduling and scope requirements. Normal fluctuations in the workload budget from one calendar year to the next are also variables that influence the change in the calculated OTR compared to previous years. Workload budget variables include, but are not limited to, changes in CAMEL ratings, the number and size of credit unions that meet the annual exam and extended exam eligibility criteria, credit unions with emerging risk indicators, variations in individual state regulator programs, one-time events (*e.g.,* the implementation of the new MERIT examination system, COVID–19 pandemic economic impacts) and fluctuations in the timing of examinations related to a particular calendar year.

CUSOs are at times subject to review during the examination of a federally insured credit union. The OTR methodology captures CUSO-related time within the scope of the examination and supervision of federally insured credit unions under Principle 1 for federal credit unions and Principle 2 for federally insured state-chartered credit unions. The time designated for separate, standalone reviews of CUSOs and third-party vendors is accounted for separately in the NCUA's workload budget and is covered by Principle 2 only. The standalone review of CUSOs and third-party vendors is to identify and address risk to federally insured credit unions.

The following chart illustrates the share of the Operating Budget paid by federal credit unions (FCUs, 68.3%) and federally insured, state-chartered credit unions (FISCUs, 31.7%).

[36] 12 U.S.C. 1782(c)(2) and (3).



Operating Fee

The Board delegated authority to the Chief Financial Officer to administer the methodology approved by the Board for calculating the Operating Fee and to set the fee schedule as calculated per the approved methodology. In 2020, the Board approved and published in the **Federal Register** several changes to the Operating Fee methodology, which form the basis for how the Operating Fee is calculated in this section.[37]

To determine the annual Operating Fee assessed on federal credit unions, the NCUA first calculates the average of total assets reported in the preceding year's fourth quarter and the first three quarters of the current year, net of any reported Paycheck Protection Program (PPP) loans. Credit unions with assets less than $1 million are not assessed an Operating Fee and their assets are therefore excluded from this calculation.

Based on the Board-approved Operating Fee methodology, which is summarized in the following tables, the share of the 2022 budget funded by the Operating Fee is $123.6 million. This equates to 0.0128 percent of the estimated actual average of federal credit union assets for the four quarters ending on September 30, 2021. The overall decrease for the Operating Fee would be 11.2 percent less than 2021, as shown on the table on page 59.

As part of the Board-approved Operating Fee methodology, the NCUA can adjust the share of the budget funded by the Operating Fee based on an analysis of the agency's forward cash flow requirements compared to past years' collections that were not spent as planned. Any projected surplus cash from past years' fee collections not required to finance agency operations can accordingly be used to lower the Operating Fee share of the proposed budget. Because such cash surpluses result from past years' Operating Fee collections, they do not offset the portion of the budget funded by the Overhead Transfer Rate.

To set the assessment scale for 2022, total growth in federal credit union assets is calculated as the change between the average of the four most-current quarters (*i.e.,* the fourth quarter of 2020 and the first three quarters of 2021) and the previous four quarters (*i.e.,* the fourth quarter of 2019 and the first three quarters of 2020), which is estimated to be 14.3 percent.[38] Asset level dividing points are likewise increased by this same growth rate in order to preserve the same relative relationship of the scale to the applicable asset base.

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[37] *https://www.govinfo.gov/content/pkg/FR-2020-12-31/pdf/2020-28490.pdf.*

[38] For the staff draft budget, total assets are determined using the 2021 second quarter data based on actual call report data.

PROJECTED FISCAL YEAR 2022 OPERATING FEE REQUIREMENTS

($ in millions)

				2022 Request
1	Proposed Operating Budget		$	326.004
2	Add Capital Investments		$	13.069
3	Miscellaneous Revenue		$	(0.432)
4	**Operating Budget to apply OTR**		**$**	**338.641**
5	Overhead Transfer Rate	**63.4%**	$	(214.698)
6	Interest Income		$	(0.049)
7	**Net** (sum lines 4 - 6)		**$**	**123.894**
8	Operating Fund adjustment		$	-
9	**Budgeted Operating Fee/Capital Requirements** (sum lines 7 - 8)		**$**	**123.894**
10	Corporate Federal CU Operating Fees		$	(0.275)
11	**Natural Person FCU Operating Fees Required** (sum lines 9 -10)		**$**	**123.619**
12	Fees projected with Asset Growth of	**14.3%**	$	(139.146)
13	**Difference** (lines 11 & 12)		**$**	**(15.528)**
14	**Average Rate Adjustment Indicated** (line 13 divided by line 12)			**-11.16%**

Operating Fee Scale

To illustrate the rate for each asset tier for which Operating Fees are charged, the tables below show the effect of the average 11.2 percent decrease in the Operating Fee for natural person federal credit unions. The corporate federal credit union rate scale remains unchanged from prior years.

PROPOSED 2022 OPERATING FEE SCALE

2021 Natural Person Federal Credit Union Scale

Asset Level			Operating Fee Assessment				
$0	TO	$1,000,000	$0.00				
$1,000,000	TO	$1,791,928,486	$0.00	+	0.00021904	X total assets over	$0.00
$1,791,928,486	TO	$5,422,348,676	$392,504	+	0.00006384	X total assets over	$1,791,928,486
$5,422,348,676	AND	Over	$624,270	+	0.00002132	X total assets over	$5,422,348,676

2022 (Proposed) Natural Person Federal Credit Union Scale

Projected FCU asset growth rate	14.31%	Change in asset level dividing points
Operating fee rate change	-11.16%	Change in assessment rate percentages

Asset Level			Operating Fee Assessment				
$0	TO	$1,000,000	$0.00				
$1,000,000	TO	$2,048,353,452	$0.00	+	0.00019460	X total assets over	$0.00
$2,048,353,452	TO	$6,198,286,772	$398,610	+	0.00005672	X total assets over	$2,048,353,452
$6,198,286,772	AND	Over	$633,994	+	0.00001894	X total assets over	$6,198,286,772

FY2022 (Proposed) Corporate Federal Credit Union Scale

Asset Level			Operating Fee Assessment				
$50,000,000	TO	$100,000,000	$10,657	+	0.00019870	X total assets over	$50,000,000
$100,000,000	AND	Over	$20,592	+	0.00001230	X total assets over	$100,000,000

Operating Fee Scale explanation:	
Projected federal credit union asset growth = change in asset level dividing points. Every year, the asset level scale is adjusted by the same percentage as the estimated growth rate.	Percent growth noted on line 12
Operating fee rate change = Change in assessment rate percentage	Same as line 14
The **Corporate Credit Union scale** remains unchanged from year to year. The number of CCUs is small and stable. Collections from CCUs do not vary significantly between years.	

IX. Appendix A: Supplemental Budget Information

Office Budget Summary

2022 – 2023 NCUA OPERATING BUDGET

Office	2021 Board Approved Budget	2022 Requested Budget	2021 – 2022 Change		2023 Requested Budget	2022 – 2023 Change		Authorized Positions		
								2021**	2022	2023
Eastern Region	55,790,374	60,249,706	4,459,332	8.0%	64,664,280	4,414,575	7.3%	285	298	299
Southern Region	44,243,608	49,587,680	5,344,072	12.1%	53,355,938	3,768,258	7.6%	233	243	244
Western Region	46,840,638	51,715,471	4,874,833	10.4%	55,022,524	3,307,052	6.4%	237	247	248
Office of National Examinations and Supervision	12,340,885	14,080,875	1,739,990	14.1%	15,238,176	1,157,300	8.2%	45	50	54
Supervision and Examination	**159,215,505**	**175,633,733**	**16,418,228**	**10.3%**	**188,280,918**	**12,647,185**	**7.2%**	**800**	**838**	**845**
Office of the Board**	3,158,614	3,595,833	437,219	13.8%	3,731,120	135,287	3.8%	13	13	13
Office of the Executive Director**	3,197,536	3,420,459	222,923	7.0%	3,841,509	421,051	12.3%	10	11	12
Federal Financial Institutions Examination Council	1,371,852	1,290,000	(81,852)	-6.0%	1,290,000	-	0.0%	-	-	-
Office of Ethics Counsel**	908,471	1,673,855	765,384	84.2%	1,776,048	102,193	6.1%	6	6	6
Office of Business Innovation	3,237,552	3,653,909	416,357	12.9%	3,829,427	175,518	4.8%	12	13	13
Office of Continuity and Security Management	4,999,557	5,187,310	187,753	3.8%	5,337,777	150,467	2.9%	12	12	12
Office of Minority and Women Inclusion	3,502,845	3,841,792	338,947	9.7%	3,973,730	131,938	3.4%	10	10	10
Office of the Chief Economist	2,468,812	2,539,681	70,869	2.9%	2,654,408	114,727	4.5%	8	8	8
Office of Consumer Financial Protection	5,486,225	6,869,093	1,382,868	25.2%	7,844,136	975,043	14.2%	25	30	30
Office of the Chief Financial Officer	21,308,605	21,283,704	(24,901)	-0.1%	21,879,714	596,010	2.8%	54	53	53
Cross-cutting agency expenses	1,856,581	(20,346,000)	(22,202,581)	-1195.9%	1,192,000	21,538,000	-105.9%	-	-	-
Office of the Chief Information Officer	44,026,198	53,146,616	9,120,418	20.7%	53,738,725	592,109	1.1%	45	45	45
Credit Union Resources and Expansion	8,656,705	9,679,247	1,022,542	11.8%	10,445,134	765,888	7.9%	36	38	38
Office of Examination & Insurance*	14,836,689	15,120,900	284,211	1.9%	16,205,253	1,084,353	7.2%	57	55	55
Office of General Counsel	12,491,302	13,459,264	967,962	7.7%	14,096,623	637,359	4.7%	45	46	46
Office of Inspector General	4,022,421	4,048,411	25,990	0.6%	4,189,111	140,700	3.5%	10	10	10
Office of Human Resources	15,384,947	16,401,969	1,017,022	6.6%	19,114,197	2,712,228	16.5%	43	44	44
Office of External Affairs and Communication	4,429,909	5,503,797	1,073,888	24.2%	5,902,708	398,912	7.2%	13	15	15
Mission Support	**155,344,821**	**150,369,838**	**(4,974,983)**	**-3.2%**	**181,041,619**	**30,671,781**	**20.4%**	**399**	**409**	**410**
Total*	**$314,560,326**	**$326,003,571**	**$11,443,245**	**3.6%**	**$369,322,537**	**$43,318,966**	**13.3%**	**1,199**	**1,247**	**1,255**

* Budget includes 5 FTEs related to other Central Liquidity Fund.
** 2021 Mid-session Budget authorized seven new FTEs: Board (1), Office of the Executive Director (1), Office of Ethics Counsel (3), and the Office of Chief Information Officer (2).

Board Budgets

OFFICE OF THE CHAIRMAN: 2022–2023 BUDGET SUMMARY							
	2021 Board Approved Budget	2022 Requested Budget	2021-2022 Change	Change Percent	2023 Requested Budget	2022-2023 Change	Change Percent
FTE	**4.0**	**4.0**	**-**	**0.0%**	**4.0**	**-**	**-**
Employee Compensation	933,861	1,002,110	68,249	7.3%	1,040,061	37,951	3.8%
Salaries	664,178	708,342	44,165	6.6%	737,424	29,082	4.1%
Benefits	269,684	293,768	24,084	8.9%	302,637	8,869	3.0%
Travel	39,000	50,000	11,000	28.2%	50,000	-	0.0%
Rent /Comm/Util	1,700	2,250	550	32.4%	2,250	-	0.0%
Administrative	10,000	10,000	-	0.0%	10,000	-	0.0%
Contracted Services	43,000	43,000	-	0.0%	43,000	-	0.0%
Total	**$ 1,027,561**	**$ 1,107,360**	**$ 79,799**	**7.8%**	**$ 1,145,311**	**$ 37,951**	**3.4%**

BOARD MEMBER HAUPTMAN: 2022–2023 BUDGET SUMMARY							
	2021 Board Approved Budget	2022 Requested Budget	2021-2022 Change	Change Percent	2023 Requested Budget	2022-2023 Change	Change Percent
FTE	**3.0**	**3.0**	**-**	**0.0%**	**3.0**	**-**	**-**
Employee Compensation	699,816	711,778	11,962	1.7%	735,951	24,174	3.4%
Salaries	496,137	500,324	4,187	0.8%	518,735	18,411	3.7%
Benefits	203,679	211,454	7,774	3.8%	217,216	5,763	2.7%
Travel	34,000	50,000	16,000	47.1%	50,000	-	0.0%
Rent /Comm/Util	1,400	1,750	350	25.0%	1,750	-	0.0%
Administrative	9,000	9,000	-	0.0%	9,000	-	0.0%
Contracted Services	43,000	43,000	-	0.0%	43,000	-	0.0%
Total	**$ 787,216**	**$ 815,528**	**$ 28,312**	**3.6%**	**$ 839,701**	**$ 24,174**	**3.0%**

BOARD MEMBER HOOD: 2022–2023 BUDGET SUMMARY							
	2021 Board Approved Budget	2022 Requested Budget	2021-2022 Change	Change Percent	2023 Requested Budget	2022-2023 Change	Change Percent
FTE	**3.0**	**3.0**	**-**	**-**	**3.0**	**-**	**-**
Employee Compensation	788,187	794,794	6,607	0.8%	822,941	28,147	3.5%
Salaries	564,755	563,762	(992)	-0.2%	585,590	21,828	3.9%
Benefits	223,432	231,032	7,600	3.4%	237,351	6,319	2.7%
Travel	34,000	50,000	16,000	47.1%	50,000	-	0.0%
Rent /Comm/Util	1,400	1,750	350	25.0%	1,750	-	0.0%
Administrative	9,000	9,000	-	0.0%	9,000	-	0.0%
Contracted Services	43,000	43,000	-	0.0%	43,000	-	0.0%
Total	**$ 875,587**	**$ 898,544**	**$ 22,957**	**2.6%**	**$ 926,691**	**$ 28,147**	**3.1%**

Note: Minor rounding differences may occur in totals.

Office Budgets

OFFICE OF THE BOARD: 2022–2023 BUDGET SUMMARY							
	2021 Board Approved Budget	2022 Requested Budget	2021-2022 Change	Change Percent	2023 Requested Budget	2022-2023 Change	Change Percent
FTE	**13.0**	**13.0**	**-**	**-**	**13.0**	**-**	**-**
Employee Compensation	2,873,114	3,206,083	332,969	11.6%	3,341,370	135,287	4.2%
Salaries	2,046,829	2,272,044	225,215	11.0%	2,376,052	104,008	4.6%
Benefits	826,286	934,039	107,754	13.0%	965,318	31,279	3.3%
Travel	109,000	152,000	43,000	39.4%	152,000	-	0.0%
Rent /Comm/Util	5,500	7,750	2,250	40.9%	7,750	-	0.0%
Administrative	28,500	29,000	500	1.8%	29,000	-	0.0%
Contracted Services	142,500	201,000	58,500	41.1%	201,000	-	0.0%
Total	**$ 3,158,614**	**$ 3,595,833**	**$ 437,219**	**13.8%**	**$ 3,731,120**	**$ 135,287**	**3.8%**

OFFICE OF THE EXECUTIVE DIRECTOR: 2022–2023 BUDGET SUMMARY							
	2021 Board Approved Budget	2022 Requested Budget	2021-2022 Change	Change Percent	2023 Requested Budget	2022-2023 Change	Change Percent
FTE*	**10.0**	**11.0**	**1.0**	**10.0%**	**12.0**	**1.0**	**9.1%**
Employee Compensation	2,359,536	2,862,709	503,173	21.3%	3,283,759	421,051	14.7%
Salaries	1,689,391	2,019,561	330,170	19.5%	2,332,796	313,235	15.5%
Benefits	670,144	843,147	173,003	25.8%	950,963	107,816	12.8%
Travel	22,000	30,000	8,000	36.4%	30,000	-	0.0%
Rent /Comm/Util	20,250	22,000	1,750	8.6%	22,000	-	0.0%
Administrative	1,397,102	1,315,250	(81,852)	-5.9%	1,315,250	-	0.0%
ED Core	25,250	25,250	-	0.0%	25,250	-	0.0%
FFIEC	1,371,852	1,290,000	(81,852)	-6.0%	1,290,000	-	0.0%
Contracted Services	770,500	480,500	(290,000)	-37.6%	480,500	-	0.0%
Total	**$ 4,569,388**	**$ 4,710,459**	**$ 141,071**	**3.1%**	**$ 5,131,509**	**$ 421,051**	**8.9%**

* 2021 and 2022 OED FTE levels include 2 unallocated FTE

OFFICE OF ETHICS COUNSEL: 2022-2023 BUDGET SUMMARY							
	2021 Board Approved Budget	2022 Requested Budget	2021-2022 Change	Change Percent	2023 Requested Budget	2022-2023 Change	Change Percent
FTE	**6.0**	**6.0**	**-**	**-**	**6.0**	**-**	**-**
Employee Compensation	893,471	1,586,755	693,284	77.6%	1,688,948	102,193	6.4%
Salaries	648,212	1,148,773	500,561	77.2%	1,228,023	79,250	6.9%
Benefits	245,259	437,982	192,724	78.6%	460,925	22,943	5.2%
Travel	10,000	15,000	5,000	50.0%	15,000	-	0.0%
Rent /Comm/Util	2,000	3,600	1,600	80.0%	3,600	-	0.0%
Administrative	3,000	3,000	-	0.0%	3,000	-	0.0%
Contracted Services	-	65,500	65,500	0.0%	65,500	-	0.0%
Total	**$ 908,471**	**$ 1,673,855**	**$ 765,384**	**84.2%**	**$ 1,776,048**	**$ 102,193**	**6.1%**

Note: Minor rounding differences may occur in totals.

OFFICE OF BUSINESS INNOVATION: 2022–2023 BUDGET SUMMARY							
	2021 Board Approved Budget	2022 Requested Budget	2021-2022 Change	Change Percent	2023 Requested Budget	2022-2023 Change	Change Percent
FTE	**12.0**	**13.0**	**1.0**	**8.3%**	**13.0**	**-**	**-**
Employee Compensation	3,115,002	3,510,809	395,806	12.7%	3,686,327	175,518	5.0%
Salaries	2,234,028	2,507,186	273,158	12.2%	2,642,226	135,040	5.4%
Benefits	880,974	1,003,623	122,648	13.9%	1,044,101	40,478	4.0%
Travel	71,000	96,800	25,800	36.3%	96,800	-	0.0%
Rent /Comm/Util	4,650	7,800	3,150	67.7%	7,800	-	0.0%
Administrative	8,100	5,500	(2,600)	-32.1%	5,500	-	0.0%
Contracted Services	38,800	33,000	(5,800)	-14.9%	33,000	-	0.0%
Total	**$ 3,237,552**	**$ 3,653,909**	**$ 416,356**	**12.9%**	**$ 3,829,427**	**$ 175,518**	**4.8%**

OFFICE OF CONTINUITY AND SECURITY MANAGEMENT: 2022–2023 BUDGET SUMMARY							
	2021 Board Approved Budget	2022 Requested Budget	2021-2022 Change	Change Percent	2023 Requested Budget	2022-2023 Change	Change Percent
FTE	**12.0**	**12.0**	**-**	**-**	**12.0**	**-**	**-**
Employee Compensation	3,011,617	3,032,683	21,066	0.7%	3,183,150	150,467	5.0%
Salaries	2,157,167	2,150,670	(6,498)	-0.3%	2,266,507	115,837	5.4%
Benefits	854,450	882,013	27,564	3.2%	916,643	34,630	3.9%
Travel	10,000	20,000	10,000	100.0%	20,000	-	0.0%
Rent /Comm/Util	35,000	35,000	-	0.0%	35,000	-	0.0%
Administrative	36,000	36,000	-	0.0%	36,000	-	0.0%
Contracted Services	1,906,940	2,063,627	156,687	8.2%	2,063,627	-	0.0%
Total	**$ 4,999,557**	**$ 5,187,310**	**$ 187,753**	**3.8%**	**$ 5,337,777**	**$ 150,467**	**2.9%**

OFFICE OF MINORITY AND WOMEN INCLUSION: 2022–2023 BUDGET SUMMARY							
	2021 Board Approved Budget	2022 Requested Budget	2021-2022 Change	Change Percent	2023 Requested Budget	2022-2023 Change	Change Percent
FTE	**10.0**	**10.0**	**-**	**-**	**10.0**	**-**	**-**
Employee Compensation	2,545,846	2,663,102	117,256	4.6%	2,795,040	131,938	5.0%
Salaries	1,824,521	1,895,178	70,657	3.9%	1,997,254	102,076	5.4%
Benefits	721,325	767,924	46,599	6.5%	797,786	29,862	3.9%
Travel	76,169	75,001	(1,168)	-1.5%	75,001	-	0.0%
Rent /Comm/Util	18,700	13,941	(4,759)	-25.4%	13,941	-	0.0%
Administrative	207,091	211,759	4,668	2.3%	211,759	-	0.0%
Contracted Services	655,039	877,989	222,950	34.0%	877,989	-	0.0%
Total	**$ 3,502,845**	**$ 3,841,792**	**$ 338,947**	**9.7%**	**$ 3,973,730**	**$ 131,938**	**3.4%**

Note: Minor rounding differences may occur in totals.

OFFICE OF THE CHIEF ECONOMIST: 2022–2023 BUDGET SUMMARY							
	2021 Board Approved Budget	2022 Requested Budget	2021-2022 Change	Change Percent	2023 Requested Budget	2022-2023 Change	Change Percent
FTE	**8.0**	**8.0**	-	-	**8.0**	-	-
Employee Compensation	2,241,359	2,307,745	66,386	3.0%	2,422,472	114,727	5.0%
Salaries	1,617,535	1,651,843	34,308	2.1%	1,740,813	88,970	5.4%
Benefits	623,824	655,902	32,079	5.1%	681,659	25,757	3.9%
Travel	12,000	20,000	8,000	66.7%	20,000	-	0.0%
Rent /Comm/Util	4,200	4,200	-	0.0%	4,200	-	0.0%
Administrative	206,939	203,422	(3,517)	-1.7%	203,422	-	0.0%
Contracted Services	4,314	4,314	-	0.0%	4,314	-	0.0%
Total	**$ 2,468,812**	**$ 2,539,681**	**$ 70,869**	**2.9%**	**$ 2,654,408**	**$ 114,727**	**4.5%**

OFFICE OF CONSUMER FINANCIAL PROTECTION: 2022–2023 BUDGET SUMMARY							
	2021 Board Approved Budget	2022 Requested Budget	2021-2022 Change	Change Percent	2023 Requested Budget	2022-2023 Change	Change Percent
FTE	**25.0**	**30.0**	**5.0**	**20.0%**	**30.0**	-	-
Employee Compensation	5,217,891	6,356,866	1,138,975	21.8%	7,331,909	975,043	15.3%
Salaries	3,687,530	4,485,888	798,358	21.7%	5,214,866	728,978	16.3%
Benefits	1,530,361	1,870,978	340,617	22.3%	2,117,043	246,065	13.2%
Travel	174,596	353,547	178,951	102.5%	353,547	-	0.0%
Rent /Comm/Util	37,200	42,150	4,950	13.3%	42,150	-	0.0%
Administrative	26,430	27,430	1,000	3.8%	27,430	-	0.0%
Contracted Services	30,108	89,100	58,992	195.9%	89,100	-	0.0%
Total	**$5,486,225**	**$6,869,093**	**$1,382,868**	**25.2%**	**$7,844,136**	**$975,043**	**14.2%**

Note: Minor rounding differences may occur in totals.

OFFICE OF THE CHIEF FINANCIAL OFFICER: 2022–2023 BUDGET SUMMARY							
	2021 Board Approved Budget	2022 Requested Budget	2021-2022 Change	Change Percent	2023 Requested Budget	2022-2023 Change	Change Percent
FTE	**54.0**	**53.0**	**(1.0)**	**-1.9%**	**53.0**	**-**	**-**
Employee Compensation	12,246,554	13,592,420	1,345,865	11.0%	12,726,430	(865,990)	-6.4%
Salaries	8,576,122	9,720,869	1,144,747	13.3%	9,803,311	82,442	0.8%
OCFO	8,090,173	8,455,869	365,696	4.5%	8,911,311	455,442	5.4%
Crosscutting	485,949	1,265,000	779,051	160.3%	892,000	(373,000)	-29.5%
Benefits	3,670,432	3,871,550	201,118	5.5%	2,923,119	(948,432)	-24.5%
OCFO	3,356,432	3,582,550	226,118	6.7%	3,723,119	140,568	3.9%
Crosscutting	314,000	289,000	(25,000)	-8.0%	(800,000)	(1,089,000)	-376.8%
Travel	38,000	40,000	2,000	5.3%	40,000	-	0.0%
OCFO	38,000	40,000	2,000	5.3%	40,000	-	0.0%
Rent /Comm/Util	618,000	674,705	56,705	9.2%	674,705	-	0.0%
OCFO	618,000	674,705	56,705	9.2%	674,705	-	0.0%
Administrative	1,794,000	1,737,900	(56,100)	-3.1%	1,737,900	-	0.0%
OCFO	944,000	637,900	(306,100)	-32.4%	637,900	-	0.0%
Crosscutting	850,000	1,100,000	250,000	29.4%	1,100,000	-	0.0%
Contracted Services	8,468,632	(15,107,321)	(23,575,953)	-278.4%	7,892,679	23,000,000	-152.2%
OCFO	8,262,000	7,892,679	(369,321)	-4.5%	7,892,679	-	0.0%
Crosscutting	206,632	(23,000,000)	(23,206,632)	-11230.9%		23,000,000	-100.0%
Total	**$ 23,165,186**	**$ 937,704**	**$ (22,227,483)**	**-96.0%**	**$ 23,071,714**	**$ 22,134,010**	**2360.4%**
OCFO Total	21,308,605	21,283,704	(24,902)	-0.1%	21,879,714	596,010	2.8%
Crosscutting	1,856,581	(20,346,000)	(22,202,581)	-1195.9%	1,192,000	21,538,000	-105.9%

OFFICE OF THE CHIEF INFORMATION OFFICER: 2022–2023 BUDGET SUMMARY							
	2021 Board Approved Budget	2022 Requested Budget	2021-2022 Change	Change Percent	2023 Requested Budget	2022-2023 Change	Change Percent
FTE	**45.0**	**45.0**	**-**	**-**	**45.0**	**-**	**-**
Employee Compensation	10,996,943	11,587,343	590,400	5.4%	12,179,452	592,109	5.1%
Salaries	7,879,267	8,236,674	357,406	4.5%	8,693,353	456,679	5.5%
Benefits	3,117,676	3,350,670	232,994	7.5%	3,486,099	135,429	4.0%
Travel	31,000	60,000	29,000	93.5%	60,000	-	0.0%
Rent /Comm/Util	5,337,135	2,906,500	(2,430,635)	-45.5%	2,906,500	-	0.0%
Administrative	30,000	30,000	-	0.0%	30,000	-	0.0%
Contracted Services	27,631,120	38,562,773	10,931,653	39.6%	38,562,773	-	0.0%
Total	**$ 44,026,198**	**$ 53,146,616**	**$ 9,120,418**	**20.7%**	**$ 53,738,725**	**$ 592,109**	**1.1%**

Note: Minor rounding differences may occur in totals.

OFFICE OF NATIONAL EXAMINATIONS AND SUPERVISION: 2022–2023 BUDGET SUMMARY							
	2021 Board Approved Budget	2022 Requested Budget	2021-2022 Change	Change Percent	2023 Requested Budget	2022-2023 Change	Change Percent
FTE	**45.0**	**50.0**	**5.0**	**11.1%**	**54.0**	**4.0**	**8.0%**
Employee Compensation	11,305,615	12,652,680	1,347,066	11.9%	13,683,981	1,031,300	8.2%
Salaries	8,030,194	8,898,368	868,173	10.8%	9,676,459	778,091	8.7%
Benefits	3,275,420	3,754,313	478,892	14.6%	4,007,521	253,209	6.7%
Travel	676,000	1,080,000	404,000	59.8%	1,206,000	126,000	11.7%
Rent /Comm/Util	21,600	24,500	2,900	13.4%	24,500	-	0.0%
Administrative	45,070	41,595	(3,475)	-7.7%	41,595	-	0.0%
Contracted Services	292,600	282,100	(10,500)	-3.6%	282,100	-	0.0%
Total	**$ 12,340,885**	**$ 14,080,875**	**$ 1,739,991**	**14.1%**	**$ 15,238,176**	**$ 1,157,300**	**8.2%**

OFFICE OF CREDIT UNION RESOURCE AND EXPANSION: 2022–2023 BUDGET SUMMARY							
	2021 Board Approved Budget	2022 Requested Budget	2021-2022 Change	Change Percent	2023 Requested Budget	2022-2023 Change	Change Percent
FTE	**36.0**	**38.0**	**2.0**	**5.6%**	**38.0**	**-**	**0.0%**
Employee Compensation	7,956,705	8,366,247	409,541	5.1%	9,082,134	715,888	8.6%
Salaries	5,625,467	5,873,832	248,365	4.4%	6,414,177	540,345	9.2%
Benefits	2,331,238	2,492,414	161,176	6.9%	2,667,957	175,543	7.0%
Travel	276,000	439,000	163,000	59.1%	489,000	50,000	11.4%
Rent /Comm/Util	33,000	33,000	-	0.0%	33,000	-	0.0%
Administrative	38,000	38,000	-	0.0%	38,000	-	0.0%
Contracted Services	353,000	803,000	450,000	127.5%	803,000	-	0.0%
Total	**$ 8,656,705**	**$ 9,679,247**	**$ 1,022,541**	**11.8%**	**$ 10,445,134**	**$ 765,888**	**7.9%**

OFFICE OF EXAMINATION AND INSURANCE: 2022–2023 BUDGET SUMMARY							
	2021 Board Approved Budget	2022 Requested Budget	2021-2022 Change	Change Percent	2023 Requested Budget	2022-2023 Change	Change Percent
FTE	**57.0**	**55.0**	**(2.0)**	**-3.5%**	**55.0**	**-**	**-**
Employee Compensation	12,388,794	12,510,743	121,949	1.0%	13,485,096	974,353	7.8%
Salaries	8,855,876	8,863,876	8,000	0.1%	9,598,359	734,483	8.3%
Benefits	3,532,918	3,646,868	113,949	3.2%	3,886,738	239,870	6.6%
Travel	462,180	943,425	481,245	104.1%	1,053,425	110,000	11.7%
Rent /Comm/Util	23,100	28,940	5,840	25.3%	28,940	-	0.0%
Administrative	708,615	513,912	(194,703)	-27.5%	513,912	-	0.0%
Contracted Services	1,254,000	1,123,880	(130,120)	-10.4%	1,123,880	-	0.0%
Total	**$ 14,836,689**	**$ 15,120,900**	**$ 284,211**	**1.9%**	**$ 16,205,253**	**$ 1,084,353**	**7.2%**

Note: Minor rounding differences may occur in totals.

OFFICE OF GENERAL COUNSEL: 2022–2023 BUDGET SUMMARY

	2021 Board Approved Budget	2022 Requested Budget	2021-2022 Change	Change Percent	2023 Requested Budget	2022-2023 Change	Change Percent
FTE	**45.0**	**46.0**	**1.0**	**2.2%**	**46.0**	-	-
Employee Compensation	12,053,302	12,893,264	839,961	7.0%	13,530,623	637,359	4.9%
Salaries	8,688,862	9,226,019	537,157	6.2%	9,718,766	492,747	5.3%
Benefits	3,364,441	3,667,245	302,804	9.0%	3,811,857	144,612	3.9%
Travel	48,000	150,000	102,000	212.5%	150,000	-	0.0%
Rent /Comm/Util	5,000	14,000	9,000	180.0%	14,000	-	0.0%
Administrative	5,000	5,000	-	0%	5,000	-	0.0%
Contracted Services	380,000	397,000	17,000	4.5%	397,000	-	0.0%
Total	**$12,491,302**	**$13,459,264**	**$967,961**	**7.7%**	**$14,096,623**	**$637,359**	**4.7%**

OFFICE OF HUMAN RESOURCES: 2022–2023 BUDGET SUMMARY

	2021 Board Approved Budget	2022 Requested Budget	2021-2022 Change	Change Percent	2023 Requested Budget	2022-2023 Change	Change Percent
FTE	**43.0**	**44.0**	**1.0**	**2.3%**	**44.0**	-	-
Employee Compensation	10,609,324	11,040,194	430,870	4.1%	11,657,422	617,228	5.6%
Salaries	6,800,495	7,028,848	228,353	3.4%	7,496,364	467,516	6.7%
Benefits	3,808,829	4,011,346	202,517	5.3%	4,161,058	149,712	3.7%
Travel	1,048,600	1,352,000	303,400	28.9%	2,884,000	1,532,000	113.3%
Rent /Comm/Util	40,400	59,500	19,100	47.3%	285,500	226,000	379.8%
Administrative	785,540	714,000	(71,540)	-9.1%	914,000	200,000	28.0%
Contracted Services	2,901,083	3,236,275	335,192	11.6%	3,373,275	137,000	4.2%
Total	**$ 15,384,947**	**$ 16,401,969**	**$ 1,017,022**	**6.6%**	**$ 19,114,197**	**$ 2,712,228**	**16.5%**

OFFICE OF EXTERNAL AFFAIRS AND COMMUNICATION: 2022–2023 BUDGET SUMMARY

	2021 Board Approved Budget	2022 Requested Budget	2021-2022 Change	Change Percent	2023 Requested Budget	2022-2023 Change	Change Percent
FTE	**13.0**	**15.0**	**2.0**	**13.3%**	**15.0**	-	-
Employee Compensation	2,746,796	3,408,797	662,001	24.1%	3,807,708	398,912	11.7%
Salaries	1,941,846	2,418,058	476,212	24.5%	2,716,198	298,140	12.3%
Benefits	804,950	990,739	185,789	23.1%	1,091,511	100,772	10.2%
Travel	17,000	242,000	225,000	1323.5%	242,000	-	0.0%
Rent /Comm/Util	500	59,500	59,000	11800.0%	59,500	-	0.0%
Administrative	66,938	118,000	51,062	76.3%	118,000	-	0.0%
Contracted Services	1,598,675	1,675,500	76,825	4.8%	1,675,500	-	0.0%
Total	**$ 4,429,909**	**$ 5,503,797**	**$ 1,073,888**	**24.2%**	**$ 5,902,708**	**$ 398,912**	**7.2%**

Note: Minor rounding differences may occur in totals.

EASTERN REGION: 2022–2023 BUDGET SUMMARY							
	2021 Board Approved Budget	2022 Requested Budget	2021-2022 Change	Change Percent	2023 Requested Budget	2022-2023 Change	Change Percent
FTE	**285.0**	**298.0**	**13.00**	**4.6%**	**299.0**	**1.0**	**0.3%**
Employee Compensation	52,147,653	54,484,735	2,337,082	4.5%	58,304,310	3,819,575	7.0%
Salaries	36,046,234	37,361,421	1,315,186	3.6%	40,163,598	2,802,178	7.5%
Benefits	16,101,419	17,123,315	1,021,895	6.3%	18,140,712	1,017,397	5.9%
Travel	3,168,155	5,109,000	1,940,845	61.3%	5,704,000	595,000	11.6%
Rent /Comm/Util	102,622	262,868	160,246	156.2%	262,868	-	0.0%
Administrative	170,896	221,103	50,207	29.4%	221,103	-	0.0%
Contracted Services	201,048	172,000	(29,048)	-14.4%	172,000	-	0.0%
Total	**$55,790,374**	**$60,249,706**	**$4,459,331**	**8.0%**	**$64,664,280**	**$4,414,575**	**7.3%**

SOUTHERN REGION: 2022–2023 BUDGET SUMMARY							
	2021 Board Approved Budget	2022 Requested Budget	2021-2022 Change	Change Percent	2023 Requested Budget	2022-2023 Change	Change Percent
FTE	**233.0**	**243.0**	**10.00**	**4.3%**	**244.0**	**1.0**	**0.4%**
Employee Compensation	40,882,543	43,716,164	2,833,622	6.9%	46,912,422	3,196,258	7.3%
Salaries	28,278,961	29,828,074	1,549,113	5.5%	32,182,950	2,354,877	7.9%
Benefits	12,603,581	13,888,091	1,284,509	10.2%	14,729,472	841,381	6.1%
Travel	2,647,000	4,912,912	2,265,912	85.6%	5,484,912	572,000	11.6%
Rent /Comm/Util	318,488	318,000	(488)	-0.2%	318,000	-	0.0%
Administrative	186,544	209,254	22,710	12.2%	209,254	-	0.0%
Contracted Services	209,033	431,350	222,317	106.4%	431,350	-	0.0%
Total	**$ 44,243,608**	**$ 49,587,680**	**$ 5,344,073**	**12.1%**	**$ 53,355,938**	**$ 3,768,258**	**7.6%**

WESTERN REGION: 2022–2023 BUDGET SUMMARY							
	2021 Board Approved Budget	2022 Requested Budget	2021-2022 Change	Change Percent	2023 Requested Budget	2022-2023 Change	Change Percent
FTE	**237.0**	**247.0**	**10.0**	**4.2%**	**248.0**	**1.0**	**0.4%**
Employee Compensation	42,434,238	44,890,771	2,456,533	5.8%	47,542,823	2,652,052	5.9%
Salaries	29,104,594	30,684,491	1,579,897	5.4%	32,631,549	1,947,058	6.3%
Benefits	13,329,644	14,206,280	876,636	6.6%	14,911,274	704,994	5.0%
Travel	3,346,000	5,689,000	2,343,000	70.0%	6,344,000	655,000	11.5%
Rent /Comm/Util	570,500	648,500	78,000	13.7%	648,500	-	0.0%
Administrative	258,900	261,200	2,300	0.9%	261,200	-	0.0%
Contracted Services	231,000	226,000	(5,000)	-2.2%	226,000	-	0.0%
Total	**$ 46,840,638**	**$ 51,715,471**	**$ 4,874,834**	**10.4%**	**$ 55,022,524**	**$ 3,307,052**	**6.4%**

Note: Minor rounding differences may occur in totals.

X. Appendix B: Capital Projects

NATIONAL CREDIT UNION ADMINISTRATION: CAPITAL INVESTMENT PROJECTS

Description	2021 Board Approved	2022 Board Approved	2022 Requested	2023 Requested
IT software development investments				
Examination and Supervision Solution and Infrastructure Hosting	$ 7,388,000	$ 597,000	$ 875,000	$ 1,375,000
Enterprise Systems Modernization (ESM) Data Reporting Services	$ -	$ -	$ 739,000	$ 1,283,000
Enterprise Data Program	$ 350,000	$ 350,000	$ 350,000	$ 350,000
Enterprise Central Data Repository	$ 1,626,000	$ -	$ -	$ -
Data Collection and Sharing Solution	$ -	$ -	$ -	$ 3,000,000
NCUA Website Development	$ 100,000	$ 100,000	$ 100,000	$ -
Performance Management System Replacement	$ 154,000	$ -	$ -	$ -
Continuous Diagnostic Mitigation (CDM)	$ 900,000	$ -	$ -	$ -
Anticipated New Software Development Investments (M365)	$ 1,450,000	$ -	$ -	$ -
System Updates for Significant Regulatory Changes	$ -	$ -	$ 1,000,000	$ -
CU Locator and Research a Credit Union Updates	$ -	$ -	$ 240,000	$ -
Anticipated additional software development investments	$ -	$ 14,273,000	$ -	$ 2,391,000
Total, IT software development investments	**$ 11,968,000**	**$ 15,320,000**	**$ 3,304,000**	**$ 8,399,000**
Other Information technology investments				
Enterprise Laptop Lease	$ 807,000	$ 2,075,000	$ 5,000,000	$ 100,000
Information Technology Infrastructure, Platform and Security Refresh	$ 3,870,000	$ 1,200,000	$ 1,600,000	$ 1,500,000
Refresh VoIP Phone System	$ 950,000	$ -	$ -	$ -
Hybrid Work Environment (Conference room and equipment upgrades)	$ -	$ -	$ 265,000	$ -
Executive Order on Cybersecurity	$ -	$ -	$ 1,400,000	$ 3,070,000
Total, Other Information technology investments	**$ 5,627,000**	**$ 3,275,000**	**$ 8,265,000**	**$ 4,670,000**
Capital building improvements and repairs				
Central Office Rennovations	$ 500,000	$ -	$ -	$ -
Central Office HVAC System Replacement	$ -	$ -	$ 1,500,000	$ -
Austin, TX Office Building Improvements	$ 750,000	$ 250,000	$ -	$ -
Total, Capital building improvements and repairs	**$ 1,250,000**	**$ 250,000**	**$ 1,500,000**	**$ -**
Grand Total, Capital Projects	**$ 18,845,000**	**$ 18,845,000**	**$ 13,069,000**	**$ 13,069,000**

Project name	**Examination and Supervision Solution and Infrastructure Hosting (ESS&IH)/ MERIT Enhancements**					
Project sponsor	Office of Business Innovation and Office of the Chief Information Officer					
Customers/ beneficiaries	Internal: E&I, ONES, All Field Program Offices, OCIO, CURE, OHR, and OCFP External: Credit Unions, State Supervisory Authorities (SSAs)					
Budget	**$ in thousands**	**2021***	**2022****	**2023**	**2024**	**2025**
	Acquisition	$7,388	$875	$1,375	TBD	TBD
	Operations and Maintenance	$6,952	$11,322	$10,764	$11,559	TBD
	Notes: *An additional $276k was funded from the 2021 Share Insurance Fund (SIF) Administrative Budget to make the system available to State Examiners. **An additional $200k is funded from the 2022 SIF Administrative Budget to support State Supervisory Authority (SSA) data feeds.					
Link to NCUA strategic goals	Goal 1: Ensure a Safe and Sound Credit Union System. ESS will enable credit union examiners to fulfill NCUA strategic objective 1.2, "provide high-quality and efficient supervision," by providing a more effective and secure examination tool. Goal 3: Maximize organizational performance to enable mission success. ESS will enable credit union examiners to perform their work more efficiently, helping the NCUA achieve strategic objective 3.2, "deliver an efficient organizational design supported by improved business processes and innovation."					
Project performance	**Performance measure**	**2021**	**2022**	**2023**	**2024**	**2025**
	Expand the MERIT Pilot to include additional states, corporate credit unions, regional natural person credit union	Minimum 15 credit unions, 50 examiners, and one state will be on-boarded 28 credit unions, 202				

	examiners, and other contact types to gather additional feedback for enhancing MERIT and the ESS applications while supporting user adoption.	NCUA Examiners, 4 States were onboarded (Actual)				
	Finalize deployment and training of NCUA and SSA users on MERIT and associated examination systems to begin the transition from AIRES to MERIT by December 31, 2021	100% staff and SSA partners trained 100% staff and SSA partners trained (Actual)				
	Production System Availability	99.9% (Planned) 99.9% (Actual)	99.9%	99.9%	99.9%	99.9%
Detailed project description	Because of the COVID-19 pandemic, the NCUA delayed deployment of the Modern Examination and Risk Identification (MERIT) tool and its related suite of examination and supervision solutions (ESS) tools (e.g., NCUA Connect, DEXA, Admin Portal) in 2020. The NCUA continued to enhance IT services and add staff and states onto the MERIT system for select contacts as part of an expanded 2020 pilot. Starting in the summer of 2021, the NCUA deployed MERIT and trained all applicable NCUA staff, SSAs, and credit union users on the new applications.					

	In 2022, the NCUA will address system bugs reported by the broader user base and, as funds are available, will continue to enhance MERIT and the ESS suite of applications based on user feedback. The NCUA also plans to bring additional applications onto NCUA Connect to leverage this new enterprise service and meet multi-factor authentication security requirements. Capital funds will be used to upgrade platforms and contractor support for system enhancements including better security controls, Section 508 compliance, more efficient configuration capabilities, and new functionality such as improved access to data for SSAs and user experience improvements.	
Quarterly project schedule and deliverables	March 2022	Complete rollout support of MERIT with expanded Help Desk assistance augmented by regional staff.
	June 2022	Complete MERIT Platform Upgrades.
	August 2022	Complete development and testing of SSA Data export service.
	December 2022	Complete onboarding of new applications onto NCUA Connect and conduct MERIT refresher training webinar and/or attend regional meetings to address user questions and concerns.
Performance benchmark for investment	As a result of implementation of the Modern Examination and Risk Identification tool (MERIT) and its related suite of examination and supervision solutions (ESS) (e.g., NCUA Connect, DEXA, Admin Portal), users will be able to achieve: • Better controlled access to examination data across the organization. • Faster and well-organized ability to request and submit items for the examination. • Collaboration and real-time information for examiners, team members, and supervisors, including state supervisory authorities on joint exams. • Opportunities for credit union users to manage examination findings and view completed examination reports. • Business process improvements to achieve exam efficiencies, including less data redundancy and relational support between scope tasks, questionnaires, and findings.	
Project risks and mitigation strategies	**Risk**	**Mitigation**
	If the response to user-reported system bugs and requests for help are slow, then users may become frustrated and user adoption could be impacted.	Define Operating and Maintenance (O&M) service levels and manage user expectations. Actively manage O&M backlog and pro-actively communicate status and plans to users.
	If the timeline for issuing regulatory changes to industry changes, then program plans will need to adjust to align.	Carefully monitor policy decisions and actively manage the ESS&IH product backlog, making adjustments to timelines, as needed, to align with business priorities.

Project name	**Data Reporting Solution (DRS)**					
Project sponsor	Office of Business Innovation and Office of the Chief Information Officer					
Customers/ beneficiaries	Internal: All NCUA Offices External: N/A					
Budget	**$ in thousands**	**2021**	**2022**	**2023**	**2024**	**2025**
	Acquisition	$0	$739	$1,283	$300	$300
	Operations and Maintenance	$0	$0	$0	$383	$383
Link to NCUA strategic goals	Goal 1: Ensure a Safe and Sound Credit Union System. The DRS will enable agency staff to better fulfill their responsibility to "provide high-quality and efficient supervision," which is NCUA strategic objective 1.2. This will provide staff with a modern, self-service business intelligence environment enabling more responsive, powerful, and innovative data analysis and reporting capabilities. Goal 3: Maximize organizational performance to enable mission success. The DRS will enable agency staff to perform their work more effectively and efficiently, helping the NCUA achieve strategic objective 3.2, "deliver an efficient organizational design supported by improved business processes and innovation." It will provide a modern business intelligence data environment designed to meet the self-service capability needs of staff across the agency for efficient and effective data access, use, collaboration, and communication.					
Project performance	**Performance measures**	**2021**	**2022**	**2023**	**2024**	**2025**
	Provide business data staff with self-service enterprise BI tool leveraging core legacy data sources		☑			
	Develop new self-service analytic data structures in ECDR with an initial subset of enterprise data		☑			
	Iteratively extend new self-service analytic data structures in ECDR with additional enterprise data			☑	☑	☑
	Iteratively transition the self-service enterprise BI tool data sources to newly developed self-service analytic data structures in the ECDR once validated for business use			☑	☑	☑

	Phase 1 - Integrate MERIT data from MetricStream into ECDR and make ready for consumption into new self-service analytic data marts			☑		
	Phase 2 - Integrate remaining MERIT data from MetricStream into ECDR and make ready for consumption into new self-service analytic data marts			☑		
	Procure and implement metadata management software			☑	☑	☑

Detailed project description	The Data Reporting Solution (DRS) is part of the NCUA's Enterprise Solution Modernization (ESM) program. ESM's purpose is to modernize NCUA's technology solutions to create an integrated examination and data environment and facilitate a safe and sound credit union system. DRS is focused on implementing a business intelligence solution for enhanced data access, integrity, analytics, and reporting.
	The Enterprise Data Program (EDP) provides leadership on business and governance process needs for DRS. DRS' data-related investments iteratively build towards the objective of integrating our legacy enterprise data and new MERIT data into structures that can be leveraged by the business for self-service development of reporting and analytic work products. NCUA's 2020 data maturity assessment confirmed the need for improved access and functionality in using data, with a strong desire for a common self-service BI capability for efficient and effective use by staff. DRS will provide a modern self-service BI tool for the enterprise, as well as access to data to enable staff to efficiently and effectively utilize the tool.
	DRS leverages other key modernization initiatives — the Enterprise Central Data Repository (ECDR), the new enterprise data integration point and platform to support data and analytic initiatives as well as expanded examination data in MERIT, the NCUA's new examination platform.
	Delivering a new BI environment will be an iterative process, including:
	• Rolling out an enterprise BI tool (e.g., tool access, data access, and training) for self-service to business data staff to use with the legacy data environment.
	• Developing new analytic data structures in the ECDR designed and organized for increased business value and self-service.
	  ○ The initial data set necessary to address many NCUA reporting and analytic use cases (focused largely around available exam and call report data) will only be a minimum subset of NCUA's enterprise data.
	  ○ Iterative ongoing development will continue for incorporation of other critical enterprise data over time based on prioritization of available data.
	• Iteratively transitioning the BI tool data sources from legacy to newly developed ECDR-based analytic data structures optimized and validated for business use.
	• Integrating MERIT exam data from MetricStream into the ECDR so it is ready to					

	incorporate into the new analytic data structures for self-service. • Obtaining and implementing metadata management software to provide a business data glossary, quality, lineage, and governance functionality. • Sunsetting, repointing (to new analytic data sources in ECDR), and/or recreating key legacy enterprise reports. • Maintaining the new analytic data structures as part of the ECDR environment, as well as the licensing to enable enterprise-level functionality of the BI tool, and the metadata management solution.	
Quarterly project schedule and deliverables	March 2022	Contractor procurement to build analytic data structures optimized for business self-service in the ECDR. Procurement for a subscription for enterprise functionality of the self-service BI tool.
	June 2022	Self-service BI tool rollout to staff.
	September 2022	NCUA data staff start using the enterprise self-service BI tool to develop and transition reports.
	December 2022	Initial baseline analytic data structures in ECDR ready for validation by business.
Performance benchmark for investment	• Create reporting and analysis efficiencies by reducing the time required to access data, prepare data for analysis and correct data anomalies. • Reduce agency risk by improving accuracy and consistency in reporting and analytics. • Enable more responsive analytics and reporting to meet dynamic nature of agency needs. • Enable advanced analytics to enhance risk assessment of credit unions.	
Project risks and mitigation strategies	**Risk**	**Mitigation**
	If staff resources assigned to this project are needed to support unforeseen higher priority tasks, then there may be delays with project deliverables.	Continuous communication with OCIO and NCUA leadership on task prioritization and/or resource conflicts that could affect this ESM-level project.
	If an enterprise approach to designing and delivering business intelligence capability is not appropriately aligned with current business needs and culture, the effectiveness and user adoption may be significantly impacted.	Solicit business feedback, establish a refined project plan with clear milestones, establish an effective collaboration model, establish phased accountability checkpoints, and ensure senior executive management is presented with options and recommendations during critical junctions of the project.
	If the development of ECDR-based analytic data structures optimized for business use take longer than planned, then their use with the enterprise self-service BI tool will be delayed.	In the interim, business users will have the benefit of utilizing the enterprise self-service BI tool in the current legacy data environment, which would still provide data analytic and reporting capabilities to meet the mission.

Project name	**Enterprise Data Program (EDP)** *formerly Enterprise Data Analytics, Governance and Reporting Services*					
Project sponsor	Office of Business Innovation					
Customers/ beneficiaries	Internal: All NCUA Offices External: N/A					
Budget	**$ in thousands**	**2021**	**2022**	**2023**	**2024**	**2025**
	Acquisition	$350	$350	$350	$200	$200
	Operations and Maintenance	$0	$0	$0	$150	$150
Link to NCUA strategic goals	Goal 1: Ensure a Safe and Sound Credit Union System. The EDP will enable agency staff to better fulfill their responsibility to "provide high-quality and efficient supervision," which is NCUA Strategic Objective 1.2, by maturing data management practices in order to ensure the use of high-quality data in operations, reporting, and analytics. Goal 3: Maximize organizational performance to enable mission success. The EDP will enable agency staff to perform their work more effectively and efficiently, helping the NCUA achieve Strategic Objective 3.2, "deliver an efficient organizational design supported by improved business processes and innovation," by managing enterprise data via effective collaboration among stakeholders on new data standards — as the data lifecycle involves multiple offices across the agency.					
Project performance	**Performance measure**	**2021**	**2022**	**2023**	**2024**	**2025**
	Assess and align EDP with Federal Data Strategy and Evidence-Based Policy Making Act	☑	☑	☑	☑	☑
	Continue Training and Support of Operation of the Enterprise Data Governance Council	☑	☑	☑	☑	☑
	Implement data governance for initial data standards for Exam and Institutional Financial Data Domains	☑				
	Conduct Critical Data Element Inventory for Exam and Institutional Financial Data Domains	☑				

	Support Critical Data Element Inventory for MERIT data		☑	☑		
	Develop initial business requirements for enterprise business intelligence capability for reporting and analytics	☑				
	Develop and implement a collaborative framework to design and validate an enterprise business intelligence capability for reporting and analytics	☑	☑	☑	☑	☑
	Develop and implement a governance model for enterprise reporting publishing and distribution		☑	☑	☑	☑
	Support development and integration of self-service analytic and reporting environment best practices and innovation		☑	☑	☑	☑
	Conduct Business Metadata Gap Assessment for Exam and Institutional Financial Data Domains	☑	☑			
	Conduct market research on tools to meet business metadata catalogue needs		☑			
	Develop and maintain business processes to operate an enterprise metadata catalog and data dictionary			☑	☑	☑
	Define and implement requirements for data quality and compliance monitoring for enterprise data domains			☑	☑	☑
	Support extension of data governance for additional data domains and phases of the data lifecycle	☑	☑	☑	☑	☑
Detailed project description	The NCUA's Chief Data Officer leads the Enterprise Data Program. The primary goal is to enable the NCUA to manage enterprise data as a strategic asset through its full lifecycle. The program focus is to improve the agency's effectiveness by maturing data management practices to ensure the use of high-quality data in operations, reporting, and analytics. This is a highly collaborative effort to facilitate alignment across offices and performance of data-related work. Additionally, the EDP provides the overall business leadership and strategic direction for the Data Reporting Solution (DRS) as part of the NCUA's Enterprise Solution Modernization Program. The EDP reduces risks facing the current data environment and improves the NCUA's overall reporting and data analysis capabilities. This will be accomplished through governed data and as well as a governed self-service business intelligence capability to conduct risk analysis and target					

	exams and supervision where needed to enhance the agency's ability to adapt to institution and industry conditions.	
Quarterly project schedule and deliverables	March 2022	Develop and implement a model for collaborative business intelligence capability, validation, and delivery.
	June 2022	Complete market research on tools to meet business metadata needs.
	September 2022	Develop and socialize an enterprise analytic governance plan.
	December 2022	Execute enterprise analytic governance plan.
Performance benchmark for investment	• Create reporting and analysis efficiencies by reducing the time required to prepare data for analysis and correct data anomalies. • Reduce agency risk by improving accuracy in reporting and analytics. Standardizing critical data and driving increased consistency in reporting processes will mitigate risk of inconsistent reporting processes. • Enable advanced analytics to enhance risk assessment of credit unions.	
Project risks and mitigation strategies	**Risk**	**Mitigation**
	If the design and implementation of data-related organizational processes are not adequately informed and based on technical and strategic data management best practices, then the effectiveness of the agency's analytic and reporting capabilities may be reduced.	Leverage external technical expertise and industry knowledge to effectively mature data practices and advance the NCUA's internal analytic capabilities.

Project name	**NCUA Website Development**					
Project sponsor	Office of External Affairs and Communications					
Customers/ beneficiaries	External: Visitors to NCUA Public Websites					
Budget	**$ in thousands**	**2021**	**2022**	**2023**	**2024**	**2025**
	Acquisition	$100	$100	$0	$0	$0
Link to NCUA strategic goals	Goal 2: Provide a regulatory framework that is transparent, efficient, and improves consumer access. The website development project will improve how the NCUA shares information with the public, credit unions, Congress, and the media about the agency and its functions, Board actions, and other matters. The project helps the NCUA achieve Strategic Objective 2.1, "deliver an effective and transparent regulatory framework," and Strategic Objective 2.2, "enforce federal consumer financial protection laws and regulations in federal credit unions." The web services contract provides on-demand, agile support for the completion and delivery of special web projects and tasks. Goal 3: Maximize organizational performance to enable mission success. The website development project ensures that the NCUA utilizes efficient technology and business processes for managing the content of its public-facing websites.					
Project performance	**Performance measure**	**2021**	**2022**	**2023**	**2024**	**2025**
	Better data presentations will make credit union performance information accessible to more audiences, including academics, data/business intelligence firms, and reporters. Additional UX/UI improvements will make the website more accessible to an increasingly mobile audience and ensure the website adapts to changes in user behavior.	Increase Users 4%	Increase Users 4%			
Detailed project description	The website development project serves the web-related needs of the NCUA and visitors to its public websites. This funding request supports improvements to the website, such as an improved					

	user experience, and provides support for design, development, and maintenance of NCUA.gov and MyCreditUnion.gov. The project scope includes: (1) search engine optimization; (2) data visualization and other improvements to how data is presented on the public website; and (3) migrating legacy systems and utilities over to the agency's current content management system.	
Quarterly project schedule and deliverables	March 2022	Modified ITSS web services contract implemented.
	June 2022	High-priority projects implemented on a continuous basis on NCUA.gov will improve the presentation of financial performance data.
	September 2022	
	December 2022	
Performance benchmark for investment	The completion of updated visual design, content that conforms with Section 508 and usability standards, improved website traffic and engagement rates, and design documents that conform with the *NCUA Web Style Guide*.	
Project risks and mitigation strategies	**Risk**	**Mitigation**
	Urgent requests for website updates could result in content not compliant with approved style guides and accessibility standards.	OEAC will ensure content complies with requirements of the *NCUA Communications Manual*, *NCUA Web Style Guide*, Section 508, and Web Content Accessibility Guides (WCAG). OEAC will follow the change request process by creating OneStop requests for every project or request.
	New high priority project requests may result in unfunded requirements exceeding the contract budget.	OEAC will work with the agency's business units to forecast potential projects and develop project plans that are efficient and that support the agency's strategic objectives.

Project name	**Significant Regulatory Changes**					
Project sponsor	Office of the Chief Information Officer (OCIO)					
Customers/ beneficiaries	Internal: Various External: Credit Unions, Credit Union Members, State Supervisory Authorities (SSAs)					
Budget	**$ in thousands**	**2021**	**2022**	**2023**	**2024**	**2025**
	Acquisition	$0	$1,000	TBD	TBD	TBD
	Operations and Maintenance	$0	$0	$0	$0	$0
Link to NCUA strategic goals	Goal 1: Ensure a Safe and Sound Credit Union System. By making changes to systems to support new rules approved by the Board, the OCIO will enable credit union examiners to fulfill NCUA Strategic Objective 1.2, "provide high-quality and efficient supervision." Goal 2: Provide a Regulatory Framework that is Transparent, Efficient, and Improves Customer Access. OCIO will enable staff to perform their work more effectively, helping the NCUA achieve Strategic Objective 2.1, "deliver an effective and transparent regulatory framework."					
Project performance	**Performance measures**	**2021**	**2022**	**2023**	**2024**	**2025**
	TBD					
	Performance measures are "TBD" because they will depend on which initiatives are approved by the Board in 2022. A more detailed project schedule, detailed deliverables, and performance measures will be identified once the Board initiative(s) is approved.					
Detailed project description	This investment will allow for applications and databases to be updated to accommodate the NCUA Board initiatives. Often, when Board initiatives are passed, the regulatory changes impact multiple legacy systems. These changes can be significant, requiring additional time and resources to ensure affected systems are updated before the rule goes into effect. Examples of Board-approved initiatives from 2021 include: approval for adding a sensitivity or "S" component rating to the existing CAMEL system in October 2021; approval of the Current Expected Credit Losses (CECL) Final Rule in June of 2021. This investment would allow for the OCIO to implement Board priorities in the necessary systems, thereby supporting the over-arching NCUA mission. Should any additional rules approved by the Board take effect in 2022, OCIO would need to immediately start assessing the impact to systems and how they need to be modified to support the rule change. Depending on the approved rule: • OCIO would assess the impacts to the NCUA application portfolio. During this process, OCIO may need to involve the appropriate internal and external stakeholders and system(s) owners. • Determine the level of effort (LOE) to address the rule change in the affected system(s).					

	• Acquire (as necessary) the resource(s) needed to make the change(s). • Develop a project schedule, deliverables list, and performance benchmarks to ensure funding is appropriately monitored. • Update the affected system(s). • Conduct user acceptance testing (UAT) with system owner(s) and end users. • Implement the change(s) to the system(s) in the production environment.	
Quarterly project schedule and deliverables	March 2022	TBD
	June 2022	TBD
	September 2022	TBD
	December 2022	TBD
	The items listed above are all "TBD" as they will depend on which initiatives are approved by the Board in 2022. A more detailed project schedule and detailed deliverables will be identified once the Board initiative(s) are approved, so that this investment can be appropriately tracked.	
Performance benchmark for investment	The performance benchmark for the investment will be defined once a Board initiative is approved. However, each benchmark will clearly define the system(s) affected; the due date for when the data field(s) and/or database(s) would need to be modified to support the initiative; and the acceptance of the change(s) by the relevant NCUA office.	
Project risks and mitigation strategies	**Risk**	**Mitigation**
	If regulatory changes require more system revisions than planned, then O&M work would have to be re-prioritized to address requirements or users may be required to utilize workarounds that impact the overall adoption and collection of regulatory data.	Prioritize enhancements and changes with the Board and affected stakeholders. Maintain regular communications with the Board and affected stakeholders.

Project name	**Credit Union (CU) Locator and Research a Credit Union Updates**					
Project sponsor	Office of Business Intelligence (OBI)					
Customers/ beneficiaries	Internal: E&I, CURE, OCFP, OEAC, Regions, and OBI External: Credit Unions, Credit Union Members, and the Public					
Budget	**$ in thousands**	**2021**	**2024**	**2025**	**2026**	**2027**
	Acquisition	$0	$240	$0	$0	$0
	Operations and Maintenance	$0	$0	$0	$0	$0
Link to NCUA strategic goals	Goal 2: Provide a regulatory framework that is transparent, efficient and improves consumer access. Updating CU Locator and Research a Credit Union websites will allow the NCUA to fulfill Strategic Objective 2.3, "facilitate access to federally-insured credit union financial services," by providing the public with a more user friendly tool to search for and find information on federally insured credit unions. Goal 3: Maximize organizational performance to enable mission success. Updating CU Locator and Research a Credit Union websites will help the NCUA achieve Strategic Objective 3.2.3, to "implement secure, reliable, and innovative technology solutions," by providing a more accessible website to search for and find information on federally insured credit unions.					
Project performance	**Performance measures**	**2021**	**2022**	**2023**	**2024**	**2025**
	Update CU Locator to be a mobile-responsive website and 508 compliant		100%			
	Update Research a Credit Union to be a mobile-responsive website and Section 508 compliant		100%			
	Complete CU Locator Additional Functionalities		100%			
	Complete Research a Credit Union Additional Functionalities		100%			
Detailed project description	The current CU Locator and Research a Credit Union websites are public-facing websites that can be accessed through NCUA.gov. Both websites are used externally by credit unions, credit union members, and the public to find the addresses, contact information, and member services of credit unions, and to quickly find profile and call report data. The current websites are not mobile-responsive, nor Section 508 compliant. The purpose of this investment is to update both CU Locator and Research a Credit Union websites to make them mobile-responsive websites (e.g., automatically resize to the screen size of a phone or tablet), 508 compliant, and add functionalities based upon requirements gathered.					
Quarterly project schedule and deliverables	March 2022	Complete pre-award acquisition activities and issue solicitation.				
	June 2022	Contract award.				
	September 2022	Complete CU Locator and Research a Credit Union updates.				
	December 2022	Project closeout.				
Performance benchmark for investment	As a result of updating CU Locator and Research a Credit Union websites, the NCUA will reduce its risk for having a public-facing website that is not 508 compliant. Additionally, users will have a positive user experience accessing these responsive websites from mobile devices or tablets.					
Project risks and mitigation strategies	**Risk**	**Mitigation**				
	If the acquisition timeframe is extended, then the implementation schedule will be delayed.	Provide all required procurement artifacts well in advance of deadlines and manage all activities closely with clear escalation paths for higher level issue resolution.				
	If project staff resources are assigned to other assignments, then the implementation schedule will be delayed.	Create integrated master schedule with clear process for resource prioritization and scheduling.				

Project name	**Enterprise Laptop Refresh**					
Project sponsor	Office of the Chief Information Officer					
Customers/ beneficiaries	All NCUA					
Budget	**$ in thousands**	**2021**	**2022**	**2023**	**2024**	**2025**
	Acquisition	$807	$5,000	$100	$0	$0
	Operations and Maintenance	$0	$0	$0	$0	$0
Link to NCUA strategic goals	Goal 3: Maximize organizational performance to enable mission success. The Enterprise Laptop Refresh project will help employees perform their work more effectively and efficiently, supporting Strategic Objective 3.2, "deliver an efficient organizational design supported by improved business processes and innovation." New hardware provides staff with new functionality and improved security features that enhance user productivity, increase mobile functionality, and lower IT administrative costs due to a decreased need for support services.					
Project performance	**Performance measures**	**2021**	**2022**	**2023**	**2024**	**2025**
	Ensure operability of critical, legacy business applications on the Windows 11 platform.		☑			
	Deploy new Windows 11-based laptops to all eligible NCUA employees and contractors.		☑			
	Enhance centralized management of agency laptops and applications during the O&M phase.		☑			
Detailed project description	The purpose of the Enterprise Laptop Refresh project is to provide the NCUA staff with a more efficient, mobile friendly, and secure business productivity tool to help them better perform their jobs at a reasonable cost. The project scope includes: (1) the selection of new, standard laptop configurations, (2) testing the new laptops and operating system with the NCUA's existing business and productivity applications, network, and peripherals (e.g., keyboards, printers, and scanners), (3) device acquisition, and (4) the managed deployment of the new devices to					

	all of the NCUA's employees and contractors. Future year costs are associated with the expected purchase of additional laptops and/or peripherals. By including hardware and operating system support in the purchase contract, and following a three-year replacement lifecycle, the NCUA will be able to keep pace with changes in workstation and operating system technology in a cost-effective manner.	
Quarterly project schedule and deliverables	March 2022	Complete solicitation process and award new laptop contract.
	June 2022	Test applications and complete pilot/User Acceptance Testing.
	September 2022	Deploy new laptops to all NCUA employees.
	December 2022	Complete collection and sanitization/disposition of legacy laptops.
Performance benchmark for investment	The NCUA business requirements will be compared to device performance benchmarks to determine the necessary standard workstation configurations. The NCUA will follow the OMB's Category Management Policy guidance on the acquisition of desktops and laptops as applicable.	
Project risks and mitigation strategies	**Risk**	**Mitigation**
	If COVID-19 continues to impact the global supply chain, we may encounter delays in acquiring hardware (e.g., laptops, peripherals).	Identify metrics and service level agreements for vendors to manage the risks and meet demands.
	If OneDrive for Business is not enabled, the Windows 10 Autopilot out-of-box experience will be significantly degraded.	Implement OneDrive sync capability prior to the Laptop Refresh business pilot.
	If the resident workforce does not return to Central and Regional offices, laptop and peripheral standards may need to be renegotiated.	Develop a contingency plan for NCUA office installs and end-user remote/telework office standards.

Project name	**Information Technology (IT) Infrastructure, Platform and Security Refresh**					
Project sponsor	Office of the Chief Information Officer					
Customers/ beneficiaries	Internal: All NCUA External: All Credit Unions					
Budget	**$ in thousands**	**2021**	**2022**	**2023**	**2024**	**2025**
	Acquisition	$3,870	$1,600	$1,500	$0	$0
	Operations and Maintenance	$1,068	$1,068	$1,068	$1,068	$0
Link to NCUA strategic goals	Goal 3: Maximize organizational performance to enable mission success. The Information Technology (IT) Infrastructure, Platform, and Security Refresh project will enable credit union examiners to perform their work more effectively and efficiently, helping the NCUA achieve Strategic Objective 3.2, "deliver an efficient organizational design supported by improved business processes and innovation".					
Project performance	**Performance measures**	**2021**	**2022**	**2023**	**2024**	**2025**
	Award of more cost-effective infrastructure and security support contracts	☑	☑			
Detailed project description	This project will allow the NCUA to perform refresh of network and platform hardware, as well as begin readiness for cloud adoption. Investment in these projects helps ensure business continuity and efficient operations by improving system availability and stability.					
Quarterly project schedule and deliverables	March 2022	Submit acquisitions for refresh. Begin cloud readiness planning.				
	June 2022	Continue acquisition process and monitoring. Begin cloud transition pilot test.				
	September 2022	Award contracts for refresh. Begin refresh implementation.				
	December 2022	Continue refresh implementation. Complete cloud migration roadmap.				
Performance benchmark for investment	Return on Technology Infrastructure Investment (ROTII) – This project improves system security and infrastructure stability while mitigating the risk of catastrophic system failure. Therefore, to gauge the benefit of the investment, the cost of acquiring the new system can be compared to an estimate of the economic loss that will be prevented by improved system performance. This calculation is shown in the ROTII equation:					

	$$ROTII = \frac{reduction\ in\ economic\ loss\ - cost\ of\ solution}{cost\ of\ the\ solution}$$ The reduction in economic loss is the difference between the annual measured loss prior to the investment and the projected loss after the investment, inclusive of any compliance benefits or potential impact on corporate goodwill. The economic loss is calculated using average contract labor rates and average workforce labor rates representing a potential loss of productivity for a given timeframe.
Project risks and mitigation strategies	**Risk** / **Mitigation**
	If the acquisition timeframe is extended, then the implementation schedule will be delayed. / Provide all required procurement artifacts well in advance of deadlines and manage all activities closely with clear escalation paths for higher level issue resolution.
	If staff resources are assigned to other assignments, then the implementation schedule will be delayed. / Create integrated master schedule with clear process for resource prioritization and scheduling.

Project name	**Hybrid Work Environment** (Conference Room and Senior Executive Equipment Upgrades)					
Project sponsor	Office of the Executive Director					
Customers/ beneficiaries	Internal: All NCUA					
Budget	**$ in thousands**	**2021**	**2022**	**2023**	**2024**	**2025**
	Acquisition	$0	$265	TBD	TBD	TBD
	Operations and Maintenance	$0	$0	TBD	TBD	TBD
Link to NCUA strategic goals	Goal 3: Maximize organizational performance to enable mission success. Replacing the hardware in NCUA Central Office conference rooms allows users to continue to use the conference rooms and senior executive offices.					
Project performance	**Performance measures**	**2021**	**2022**	**2023**	**2024**	**2025**
	Deployment 100% complete		☑			
Detailed project description	VoIP phones are planned to be removed in 2022, which eliminates the conference room phone services from all Central Office conference rooms. This project provides Microsoft Teams compatible conference phones and integrates the conference rooms into the NCUA M365 services for conference reservations.					
Quarterly project schedule and deliverables	March 2022	Create and submit procurement package for equipment.				
	June 2022	Finalize rollout plan for central office conference rooms and senior executive offices.				
	September 2022	Complete rollout of central office conference room equipment.				
	December 2022	Complete rollout of central office senior executive equipment.				
Performance benchmark for investment	Conference equipment remains functional in the Central Office through the VoIP refresh and integrates with M365 services already in the acquisition process.					
Project risks and mitigation strategies	**Risk**		**Mitigation**			
	If the acquisition is delayed, then conference room and senior executive conference equipment will no longer function.		Notify users and delay the rollout of updated conference equipment.			

Project name	**Executive Order on Improving the Nation's Cybersecurity**					
Project sponsor	Office of the Chief Information Officer					
Customers/ beneficiaries	Internal: All NCUA External: All Credit Unions					
Budget	**$ in thousands**	**2021**	**2022**	**2023**	**2024***	**2025***
	Acquisition	$0	$1,400	$3,070	TBD	TBD
	Operations and Maintenance			TBD	TBD	TBD
	* Estimated budget for 2024 – 2025 is "TBD" because investments will depend on the results of the gap analysis scheduled for 2022.					
Link to NCUA strategic goals	Goal 3: Maximize organizational performance to enable mission success. This multi-year capital investment will enable the NCUA to comply with Executive Order 14208, helping the NCUA achieve Strategic Objective 3.2, to "deliver an efficient organizational design supported by improved business processes and innovation."					
Project performance	**Performance measures**	**2021**	**2022**	**2023**	**2024**	**2025**
	Complete Gap Analysis and Recommendations Report		100%			
	Multi-Factor Authentication Updates		100%			
	Update Zero Trust Architecture Based Upon Gap Analysis and Recommendations Report			TBD	TBD	TBD
	Cloud Migration Based upon Gap Analysis and Recommendations Report			TBD	TBD	TBD
Detailed project description	The purpose of the Executive Order on Cybersecurity capital investment is to ensure the NCUA complies with Executive Order (EO) 14208, *Improving the Nation's Cybersecurity*. The project will enable the appropriate applications to use Multi-Factor Authentication (MFA), implement a zero-trust architecture for the NCUA's infrastructure and applications, and shift compute and storage resources from on-premise to a cloud service provider.					
Quarterly project schedule and deliverables	March 2022	Complete pre-award acquisition activities and issue solicitation for Gap Analysis and Recommendations Report.				
	June 2022	Contract Award.				
	September 2022	Complete Gap Analysis and Recommendations Report.				
	December 2022	Complete MFA identified application(s).				

Performance benchmark for investment	The performance benchmarks for the investment will be defined by the various high-level initiatives (MFA, zero trust architecture, and Cloud) within EO 14208. Each benchmark will be clearly defined based upon the high-level initiative. In 2022, the benchmark will be completing MFA for the identified application(s).	
Project risks and mitigation strategies	**Risk**	**Mitigation**
	If the acquisition timeframe is extended, then the implementation schedule will be delayed.	Provide all required procurement artifacts well in advance of deadlines and manage all activities closely with clear escalation paths for higher level issue resolution.
	If staff resources are assigned to other assignments, then the implementation schedule will be delayed.	Create integrated master schedule with clear process for resource prioritization and scheduling.

Project name	**Central Office HVAC System Replacement**					
Project sponsor	Office of the Chief Financial Officer					
Customers/ beneficiaries	Internal: All NCUA Headquarters Building Occupants External: All NCUA Headquarters Building Visitors					
Budget	**$ in thousands**	**2021**	**2022**	**2023**	**2024**	**2025**
	Acquisition	$0	$1,500	$0	$0	$0
Link to NCUA strategic goals	Goal 3: Maximize organizational performance to enable mission success. The NCUA headquarters Heating, Ventilation, and Air Conditioning (HVAC) system replacement project will improve operations in the agency's largest building while lowering utility costs by replacing end-of-life systems with more energy-efficient ones, helping achieve Strategic Objective 3.2, "deliver an efficient organizational design supported by improved business processes and innovation."					
Project performance	**Performance measure**	**2021**	**2022**	**2023**	**2024**	**2025**
	Energy Consumption (percentage reduction in energy used)	n/a	-10%	-15%	-18%	-18%
	System Outages (percentage reduction)	n/a	-20%	-40%	-60%	-70%
Detailed project description	The project will replace all HVAC systems in the headquarters building to include all cooling towers, air handlers, boilers, and other HVAC components. The current HVAC system is original to the facility (29 years old) and obsolete; some component parts are no longer available. HVAC systems are the biggest users of electricity in a facility, and the anticipated life span of these systems' major components is approximately 20–25 years. The current system is at the end of its useful life and is not working efficiently. Additionally, the maintenance and operating costs have increased considerably and system components are failing more frequently, which are clear signs of decreased reliability. By replacing the HVAC system, the NCUA will ensure its infrastructure meets all current codes for life safety, accessibility, and security. The HVAC new system will result in cost savings, increased energy and operational efficiency, and lower maintenance costs. The first phase of the HVAC project — replacing two chiller towers for the system and pre-purchasing equipment for phase two — is being executed and it is anticipated to be					

	completed by the summer of 2022. Phase two — installing chiller tower three, installing air handlers and circulators, and replacing the boiler — will be executed concurrently to reduce mobilization cost.	
Quarterly project schedule and deliverables	January 2022	Sign contract for phase two for concurrent execution with phase one.
	March-April 2022	Replace cooling tower three, air handlers one, two, and three.
	July 2022	Replace boiler.
	Nov 2022	Final test and balance of all system.
Performance benchmark for investment	The replacement will improve building efficiency by an estimated 15 percent, which exceeds the 2011 Energy Code that mandates, for existing nonresidential buildings 10,000 square feet and larger, (1) an energy efficiency audit must be performed once every 5 years identifying specific cost-effective measures that would save energy; and (2) the reduction of energy consumption of 5 percent by the introduction of more efficient systems.	
Project risks and mitigation strategies	**Risk**	**Mitigation**
	Schedule. The schedule can be impacted by demand and cooling tower manufacturing lead times. COVID-19 affected production and equipment availability, adding delays of up to 80 percent for equipment manufacturing.	Cooling tower installation will be planned for the fall or winter months, allowing adequate lead time, to prevent disruption of building operations during spring and summer. Equipment will be pre-purchased to avoid manufacturing delays and increased cost.
	Ongoing existing system failures. In 2021, the NCUA headquarters building experienced over 20 HVAC system failures due to aging equipment. It additionally experienced a major chiller failure that reduced the building cooling capacity to 50 percent.	HVAC System Replacement plan encompasses replacing parts showing high levels of deterioration first to address the most common failure types.

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H.R. 1510/P.L. 117–64

To direct the Secretary of Veterans Affairs to submit to Congress a report on the use of cameras in medical facilities of the Department of Veterans Affairs. (Nov. 23, 2021; 135 Stat. 1486)

S. 108/P.L. 117–65

To authorize the Seminole Tribe of Florida to lease or transfer certain land, and for other purposes. (Nov. 23, 2021; 135 Stat. 1488)

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CORRECTION

In the **List of Public Laws** printed in the *Federal Register* on November 19, 2021, the title for Public Law 117-59 was printed incorrectly. It should read as follows:

S. 921/P.L. 117–59

Jaime Zapata and Victor Avila Federal Officers and Employees Protection Act (Nov. 18, 2021; 135 Stat. 1468)

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